

APPEAL NO. 120412
FILED MAY 31, 2012

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 6, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the disputed issues before him, the hearing officer determined that: (1) the respondent (claimant) sustained a compensable injury on [date of injury]; (2) the claimant had disability from January 31, 2011, through February 6, 2012, the date of the CCH, and for no other dates; and (3) the claimant "was not eligible for disability benefits during his [45] days of incarceration beginning November 20, 2011."

The appellant (carrier) appealed both the compensable injury and disability issues on a sufficiency of the evidence basis. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that he was employed as a warehouse clerk and injured his low back when he tripped while carrying an automotive part at work on [date of injury].

COMPENSABLE INJURY

The hearing officer's determination that the claimant sustained a compensable injury on [date of injury], is supported by sufficient evidence and is affirmed.

DISABILITY

Disability means the inability to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. Section 401.011(16). Whether the claimant had disability, and if so for what period, was a question of fact for the hearing officer to resolve. In Appeals Panel Decision (APD) 002599, decided December 13, 2000, the Appeals Panel noted that disability is an economic concept that if an injured employee becomes incarcerated the actual loss of wages is attributable to such incarceration, which is the reason for the inability to obtain and retain employment rather than the compensable injury. See *also* APD 033309, decided February 10, 2004; and APD 012152, decided October 15, 2001. The evidence supports the hearing officer's determination that the claimant had disability for most of the period beginning January 31, 2011, and continuing through February 6, 2012, the date of the CCH. However, the claimant testified that he was incarcerated for

45 days beginning November 21, 2011.¹ In view of the evidence and the applicable law, we reverse the hearing officer's disability determination relative to the period of incarceration and render a new decision that the claimant had disability from January 31, 2011, through November 20, 2011, and from January 5, 2012, through February 6, 2012, the date of the CCH and that the claimant did not have disability from November 21, 2011, through January 4, 2012. We strike Conclusion of Law No. 7 that the claimant was not eligible for disability benefits during the period of incarceration beginning November 20, 2011, because the claimant did not have disability during the period of his incarceration.

We also correct the Decision portion of the hearing officer's decision and order to reflect that the claimant has disability resulting from an injury sustained on [date of injury], from January 31, 2011, through November 20, 2011, and from January 5, 2012, through February 6, 2012, the date of the CCH and the claimant did not have disability from November 21, 2011, through January 4, 2012. We strike the sentence that the claimant was not eligible for disability benefits during his 45 days of incarceration beginning on November 20, 2011.

¹ The claimant testified that his incarceration began November 21, 2011.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge