

APPEAL NO. 121797
FILED NOVEMBER 5, 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 August 14, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the disputed issues before her, the hearing officer determined that: (1) the appellant/cross-respondent (claimant) sustained a compensable injury on [date of injury]; and (2) the claimant had disability from March 20, 2012, and continuing through August 6, 2012, "but not from March 20, 2012, through the present."

The claimant appealed the hearing officer's disability determination, contending that the hearing officer's finding of fact and conclusion of law on disability are internally inconsistent in finding for disability and against disability for the same period of time. The claimant further alleges that if there is a finding by the hearing officer that the claimant did not have disability after August 6, 2012, this finding would not be supported by the evidence because the claimant's release to light-duty restrictions on that date did not end her disability.

The respondent/cross-appellant (carrier) responded, agreeing that the hearing officer's finding of fact and conclusion of law "are clearly internally inconsistent, and must be reformed." In that same document, entitled "Carrier's Response to Claimant's Request for Review," the carrier also timely cross-appealed the disability determination, contending that the claimant failed to establish any period of disability. The appeal file does not contain a response to the carrier's cross-appeal.

The hearing officer's determination that the claimant sustained a compensable injury on [date of injury], is not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The claimant testified that she slipped and fell in the bathroom at work. An unappealed finding of fact in the hearing officer's decision states that "[the] [c]laimant sustained damage or harm to the physical structure of her body in the form of at least a lumbar strain and contusion of the left knee while in the course and scope of employment on [date of injury]." The period of disability at issue is the period from March 20, 2012, through the date of the CCH, August 14, 2012.

DISABILITY

The claimant testified that she sought medical attention at an emergency room on [date of injury], and was taken off work until March 23, 2012. The claimant testified that she next treated with [Dr. Z] who also took the claimant off work through April 30, 2012.

The claimant also testified that she had difficulty obtaining medical treatment for her work injury because the employer denied that she had a workers' compensation claim and because she could not use her private health insurance due to it being a workers' compensation claim. In evidence is a Notice of Disputed Issues(s) and Refusal to Pay Benefits (PLN-11) dated March 29, 2012, which states that the carrier is disputing entitlement of indemnity and medical because the claimant did not have an injury, but if there was an injury, it did not arise out of the course and scope of employment.

The claimant further testified that although she tried to find a doctor, she was unable to see another doctor until she was seen by [Dr. I] and [Dr. N]. The evidence reflects that the claimant was seen by Dr. I on August 6, 2012. Dr. N submitted a Work Status Report (DWC-73) allowing the claimant to return to work with restrictions from August 6, 2012, continuing through September 6, 2012.

In her testimony, the claimant stated that she was unable to work since the date of her injury, [date of injury], and was unable to do the duties necessary for her job of an administrative assistant. The claimant stated that the prescribed medications made her sleepy, and that her knee required physical therapy so that she could work.

Also in evidence, is a letter from the employer addressed to the claimant and dated March 30, 2012. The director of human resources states to the claimant that her "last day of medically approved absence was Friday, March 23, 2012. Because your further absence has not been approved and we have not heard from you, we have determined that you have abandoned your position. In accordance with management policy on job abandonment, we are terminating your employment effective Friday, March 23, 2012."

Disability is defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage. The Appeals Panel has frequently cited the proposition that a light-duty release is evidence that disability continues. See Appeals Panel Decision (APD) 091260, decided November 5, 2009; APD 040949, decided June 15, 2004. The Appeals Panel has said on numerous occasions that a claimant under a light-duty release does not have an obligation to look for work or show that work was not available

within his or her restrictions. APD 022908, decided January 8, 2003. Even a claimant's termination for cause does not, in itself, foreclose the existence of disability. See APD 990655, decided May 13, 1999.

The question of disability presented a question of fact for the hearing officer to resolve. In the Background Information section of her decision, the hearing officer stated that the claimant provided credible evidence regarding her period of disability. The claimant contended at the CCH that she had disability from March 20, 2012, through the date of the CCH, August 14, 2012.

Finding of Fact No. 4 and Conclusion of Law No. 4 state that during the period at issue, March 20, 2012, through the present, the compensable injury was a cause of the claimant's inability to obtain and retain employment at wages equivalent to her pre-injury wage from March 20, 2012, and continuing through August 6, 2012, but not from March 20, 2012, through the present. Said Finding of Fact No. 4 and Conclusion of Law No. 4 are internally inconsistent and therefore, so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

We reverse the hearing officer's determination that the claimant had disability during the period at issue, March 20, 2012, through the present, beginning on March 20, 2012, and continuing through August 6, 2012, but not from March 20, 2012, through the present. We remand the disability issue for the hearing officer to reconsider the existing record and determine the dates of disability, if any, based on the correct standard and consistent with this decision. There is to be no new evidence presented by the parties.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge