

APPEAL NO. 130746
FILED MAY 7, 2013

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 January 30, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that on [date of injury], the appellant (claimant) sustained a compensable injury while in the course and scope of employment and "had disability only beginning on June 1, 2012, and continuing through July 1, 2012, and beginning on July 10, 2012, and continuing through August 14, 2012, and at no other times through the date of this [CCH]."

The claimant appealed, disputing the time periods that the hearing officer failed to find disability. The claimant contends that it was error for the hearing officer to limit the period of disability determined to the periods supported by the Work Status Reports (DWC-73s). The claimant additionally contends that there were four DWC-73s in evidence although the hearing officer only considered three. The respondent (carrier) responded, urging affirmance of the disputed disability determination.

The hearing officer's determinations that the claimant sustained a compensable injury on [date of injury], and that the claimant had disability on June 1, 2012, continuing through July 1, 2012, and on July 10, 2012, continuing through August 14, 2012, were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The claimant testified that he felt a pop in his left wrist while unloading a box of paper weighing approximately 50 pounds. The claimant testified that after completing the delivery at that location he got back into his truck to make his next delivery and used his right thumb to push a button on the truck and felt a pop in his right wrist. The claimant felt numbness in both his right and left hands and his pain level increased causing him to seek medical treatment.

Disability means the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury. Section 401.011(16). The claimant has the burden to prove that he had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the hearing officer. See Appeals Panel Decision (APD) 042097, decided October 18, 2004. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. APD 041116, decided July 2, 2004. The claimant need not prove

that the compensable injury was the sole cause of his disability; only that it was a producing cause. APD 042097, *supra*.

In this case, the disability period in dispute is April 26, 2012, through the date of the CCH, January 30, 2013. In the Background Information portion of his decision, the hearing officer notes that the claimant contends he had separate periods of disability between the date of the compensable injury and his return to full-duty employment on November 28, 2012. The hearing officer states that the claimant points to the “three” DWC-73s and supporting medical records, in addition to the claimant’s own testimony, as evidence of such disability. The hearing officer then specifically references “three” DWC-73s describing them by date. The hearing officer stated that “[t]he evidence provides the necessary medical rationale to support disability during the periods listed in the DWC-73s. [The] [c]laimant, however, did not meet his burden of proof to establish disability during any other periods.”

A review of the record reflects that there were four DWC-73s admitted into evidence. The hearing officer specifically describes the three DWC-73s on which he bases his determination of disability. However, the hearing officer does not describe or discuss the DWC-73 dated May 17, 2012, in which the claimant’s treating doctor takes him off of work from May 17 through May 31, 2012. Because the hearing officer stated that the evidence provided the necessary medical rationale to support disability during the periods listed in the DWC-73s but failed to consider a DWC-73 in evidence, we reverse that portion of the hearing officer’s determination that the claimant had disability “only beginning” and “at no other times” and remand that portion of the disability issue which the hearing officer found no disability (April 26 through May 31, 2012; July 2 through July 9, 2012; and August 15, 2012, through January 30, 2013), to the hearing officer for further consideration.

REMAND INSTRUCTIONS

We remand that portion of the disability issue which the hearing officer found no disability to the hearing officer to determine after a consideration of all the evidence what remaining periods, if any, the claimant had disability. The hearing officer shall base his determination solely on the evidence currently in the record. No new evidence shall be admitted, and no rehearing shall be held on remand.

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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge