

APPEAL NO. 162498
FILED FEBRUARY 1, 2017

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 October 19, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to temporomandibular joint (TMJ) disorder/dysfunction; (2) the appellant's (claimant) average weekly wage (AWW) is \$522.60; and (3) the claimant did have disability from (date of injury), through November 13, 2015, but did not have disability from November 14, 2015, through the CCH. The claimant appealed, disputing the hearing officer's determination of disability arguing that the hearing officer's conclusion of law regarding disability was inconsistent with the hearing officer's decision regarding disability. The respondent (carrier) responded, urging affirmance of that portion of the hearing officer's disability determination that the claimant did not have disability. The carrier noted that there should be correction of a typographical error.

The hearing officer's determinations that the compensable injury of (date of injury), does not extend to TMJ disorder/dysfunction and that the claimant's AWW is \$522.60 were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury in the form of at least a back contusion, jaw contusion, and traumatic fracture of teeth 14, 18, and 20. The claimant testified he was injured when he fell descending down a flight of stairs when one of the concrete stairs gave way.

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). 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.

In Finding of Fact No. 4, the hearing officer found that the compensable injury was a cause of the claimant's inability to obtain and retain employment at wages

equivalent to his pre-injury wage from November 5, 2015, through November 13, 2015, but was not a cause of the claimant's inability to obtain and retain employment at wages equivalent to his pre-injury wage from November 14, 2015, and continuing through the date of the CCH.

However, in Conclusion of Law No. 5, the hearing officer determined that the claimant did not have disability resulting from the compensable injury of (date of injury), from November 5, 2015, through the CCH.

In the decision the hearing officer determined that the claimant did have disability from (date of injury), through November 13, 2015, but did not have disability from November 14, 2015, through the CCH, resulting from an injury sustained on (date of injury).

The claimant argues in his appeal that in addition to the inconsistency in the hearing officer's disability determination, the opinion of the designated doctor is conclusory and fails to explain how the date of November 14, 2015, was used to stop disability. We note that the Request for Designated Doctor Examination (DWC-32) in evidence asked the designated doctor to address the claimant's ability to return to work for the time period of (date of injury), to the present. However, in the designated doctor's report, he states he was asked to determine the claimant's ability to return to work for the time period of November 14, 2015, through the present.

We reverse the hearing officer's decision as being internally inconsistent because her Finding of Fact No. 4 is inconsistent with her Conclusion of Law No. 5 and remand the case for the hearing officer to make a decision on disability which is consistent and is supported by the evidence.

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 **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE CO.
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge