

APPEAL NO. 030011-s
FILED FEBRUARY 24, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 26, 2002. The hearing officer determined that respondent (claimant) had disability from January 22, 2000, through the date of the hearing and that appellant (carrier) is entitled to take a credit against temporary income benefits (TIBs) for short-term disability payments made to claimant, but not for long-term disability (LTD) payments made to claimant. Carrier appealed the determinations regarding disability and the denial of the credit for LTD payments. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm in part and reverse and render in part.

Carrier contends the hearing officer erred in determining that claimant had disability. Carrier asserts that claimant was able to go back to school and that this showed he did not have disability. Claimant testified that after his ankle injury, he was told he had to be retrained. He said that he could not stand on his feet much, as his prior job had required. The hearing officer could consider various factors, such as claimant's abilities, in deciding whether claimant had disability. The fact that claimant was able to attend college classes was a factor for the hearing officer to consider, but did not require a finding that claimant did not have disability.

Carrier contends that claimant did not have disability because he abandoned medical treatment. While the medical treatment a claimant receives may be relevant to the disability issue, we note that carrier raised this issue as a factor affecting the disability finding for the first time on appeal. There was also not an issue before the hearing officer regarding presumption of maximum medical improvement and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.4 (Rule 130.4). We have reviewed carrier's assertions in this regard and conclude that whether and when claimant received medical treatment was a factor for the hearing officer to consider in making his fact determinations regarding disability. We perceive no error.

Carrier contends that claimant did not prove that he had disability after he returned to work with another employer on July 1, 2002. Claimant did not testify regarding his earnings with the new employer, and so did not meet his burden to prove disability after June 30, 2002. The hearing officer's determination that claimant had disability after June 30, 2002, is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. We affirm the hearing officer's determination that claimant had disability from January 22, 2000, through June 30, 2002. We reverse the hearing officer's determination that claimant had disability from

July 1, 2002, through the date of the hearing and render a decision that claimant did not have disability from July 1, 2002, through the date of the hearing.

Carrier contends the hearing officer erred in determining that carrier is not entitled to take a credit against TIBs for LTD payments made to the claimant. The parties stipulated that the LTD plan was funded in part by both the claimant and the employer. Considering Rule 129.2 and Texas Workers' Compensation Commission Appeal No. 010607-s, decided May 8, 2001, we conclude that the hearing officer did not err in his determinations in this regard. The hearing officer could find from the evidence that the LTD program was paid for by the employee separate from workers' compensation in this case and that carrier is not entitled to a credit. See Appeal No. 010607-s.

We affirm that part of the hearing officer's decision and order that determined that carrier is not entitled to take a credit against TIBs for LTD payments made to the claimant. We affirm the hearing officer's determination that claimant had disability from January 22, 2000, through June 30, 2002. We reverse the hearing officer's determination that claimant had disability from July 1, 2002, through the date of the hearing and render a decision that claimant did not have disability from July 1, 2002, through the date of the hearing.

According to information provided by carrier, the true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
T.P.C.I.G.A.
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge