

APPEAL NO. 091194  
FILED SEPTEMBER 30, 2009

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 in Weslaco, Texas. The hearing officer found that: (1) the employer did not tender a bona fide offer of employment (BFOE) to the appellant (claimant) and the respondent (carrier) is not entitled to adjust the claimant's post-injury weekly earnings; and (2) the claimant sustained disability as a result of the compensable injury of \_\_\_\_\_, beginning on March 29, 2009, and continuing through the date of the CCH and at no other times.

The claimant appealed the hearing officer's disability determination, contending that the beginning date of disability is February 18, 2009. The carrier responded, urging affirmance. The hearing officer's determination that the employer did not tender a BFOE was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The record reflects that the parties agreed at the beginning of the CCH that the issue of disability as certified from the benefit review conference (BRC) should be modified. The issue as stated in the BRC report was whether the claimant had disability from an injury sustained on \_\_\_\_\_, from March 29, 2009, through the present. The parties agreed on the record to modify the beginning date of the disability period at issue from March 29, 2009, to February 18, 2009. The hearing officer failed to modify the issue in his decision and order and stated that the disability issue in dispute, resulting from the claimant's compensable injury, was for a period of disability from March 29, 2009, through the date of the CCH.

The hearing officer found that the claimant worked in a light-duty position for the employer from February 9 to February 17, 2009. The claimant testified that she left work early on February 17, 2009, to go see her treating doctor. In evidence is a medical report from her treating doctor dated February 17, 2009, which notes the claimant had to leave work because she could not stand the pain to her left shoulder and elbow. Her treating doctor also noted that the claimant had right shoulder pain. The claimant's treating doctor took her completely off work and referred her for an orthopedic consultation. The claimant testified that she has not worked for her employer or anyone else since February 17, 2009. There is no evidence that the claimant has been released to return to work without restrictions by any doctor during the period in dispute. The hearing officer in an unappealed finding, found that the employer did not abide by the restrictions placed upon the claimant by the designated doctor on January 19, 2009.

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 Appeals Panel has held that the fact that a claimant is released for light duty is evidence that the effects of the injury continue and disability exists. Appeals Panel Decision 070005, decided February 13, 2007. The hearing officer's determination that the claimant sustained disability as a result of the compensable injury of \_\_\_\_\_, beginning on March 29, 2009, and continuing through the date of the CCH and at no other times is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, the hearing officer's determination that the claimant sustained disability beginning on March 29, 2009, and continuing through the date of the CCH and at no other times is reversed and a new decision rendered that the claimant sustained disability beginning on February 18, 2009, and continuing through the date of the CCH.

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

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge