

APPEAL NO. 990991

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 April 21, 1999. He determined that no good causes existed to relieve the appellant (claimant) of the effects of a benefit review conference (BRC) agreement signed on February 9, 1995, and that the agreement is binding on the claimant and the respondent (carrier). The claimant appeals this determination, expressing her disagreement with it and asserting procedural irregularities in the processing of the agreement. The carrier replies that the decision is correct and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable back and shoulder injury on _____. In June 1994, she began treatment with Dr. P, who became her treating doctor. In November 1994, the claimant engaged the services of an attorney. A BRC was convened on February 9, 1995, to address disputed issues of maximum medical improvement (MMI); impairment rating (IR); average weekly wage (AWW); whether the claimant's first IR became final; and disability. An agreement was reached that the parties accepted Dr. P's date of MMI of November 15, 1994, and his 13% IR and that the carrier would not proceed on a dispute of the finality of the first IR. AWW and disability were also resolved by agreement. This agreement was signed by the benefit review officer (BRO); the claimant; the claimant's attorney; and the carrier's attorney at the BRC convened on February 9, 1995.

By June 1995, the carrier had paid all impairment income benefits (IIBS) based on the 13% IR. The claimant said she then called her attorney for help in reinstating benefits. The claimant said the attorney told her that she, the attorney, would take care of it. The attorney then referred the claimant to Dr. H, who apparently is the current treating doctor or a referral doctor from the current treating doctor. On September 12, 1995, Dr. H certified the claimant was at MMI on August 26, 1995, and assigned a 45% IR. For reasons not made clear at the CCH, the Texas Workers' Compensation Commission, by letter of December 13, 1995, appointed Dr. S designated doctor. Dr. S examined the claimant and on January 2, 1996, certified a date of MMI of August 26, 1995, and assigned a 16% IR. There is no indication that the carrier disagreed with this appointment and, in fact, paid an additional nine weeks of IIBS in May 1996 based on the difference between the agreed 13% IR and Dr. S's 16% IR. Sometime in December 1998, the claimant discharged her attorney. On March 17, 1999, a BRC was held on the issue of whether the claimant should be relieved of the effects of the February 9, 1995, agreement, particularly with regard to MMI and IR, in order to open the way for a claim of entitlement to supplemental income benefits.

Section 410.029 provides that a dispute may be resolved by agreement at a BRC. If so, the agreement resolving the dispute must be reduced to writing and signed by the BRO and each party or the representative of the party. Section 410.030 further prescribes that such a written agreement is binding on the claimant, if represented by an attorney, absent a finding of fraud, newly discovered evidence or "other good and sufficient reason" to relieve the party of the effect of the agreement. See *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 147.9 (Rule 147.9). Whether a good and sufficient reason exists is to be determined from the facts as they stand at the time the party seeks to set aside the agreement. Texas Workers' Compensation Commission Appeal No. 950625, decided June 5, 1995. We have also held that a finding regarding the existence of good cause is reviewed by the Appeals Panel under an abuse of discretion standard, that is, whether the hearing officer looked to appropriate guiding principles. Texas Workers' Compensation Commission Appeal No. 951812, decided December 4, 1995.

It is clear in the case before us that the claimant was represented by an attorney at the time she entered the agreement and continued this representation for over three years thereafter. The claimant argues for the existence of good cause based on the following: (1) that her attorney did not advise her of the consequences of this agreement, particularly the meaning of the concept of MMI and that a first certification of an IR disputed within 90 days does not become final, see Rule 130.5(e); (2) that the agreement was not approved by the Director of Hearings; and (3) that the carrier paid an additional amount of IIBS based on Dr. S's 16% IR.

The hearing officer questioned whether Rule 130.5(e) had an impact on the claimant's decision to enter this agreement, considered the agreement to have been approved by the Director of the Division of Hearings, noticed the delay in challenging the agreement, and found no newly discovered evidence or other good and sufficient evidence to warrant relief from the effects of the agreement.

In this case, we question whether any point was served by the hearing officer's speculation as to the possible effect of Rule 130.5(e). In any event, ignorance of the law or a later realization that an agreement turns out to be a bad bargain, as opposed to ambiguity in the agreement or being misled into signing the agreement, do not generally constitute good cause for being relieved of effects of an agreement. Texas Workers' Compensation Commission Appeal No. 941091, decided September 28, 1994. Rather, a party will be presumed to know the meaning and consequences of an agreement, particularly where, as here, the party is represented by an attorney. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. We also consider any findings about whether the agreement was presented to or approved by the Director of the Division of Hearings to be surplusage and essentially irrelevant in view of the fact that there is no requirement that an agreement reduced to writing at a BRC, and signed as required, must be approved by the Director of Hearings. See Rule 147.4, which addresses agreements reached before a BRC has been scheduled. Finally, we do not believe that the carrier's gratuitous payment of nine more weeks of IIBS in May 1996 had the effect of a unilateral revocation of the

agreement and note that the claimant waited some two and one-half years after this to discharge her attorney and challenge the agreement. See Appeal No. 950625, *supra*.

Having reviewed the record of this case, we find no abuse of discretion by the hearing officer in refusing to find good cause to relieve the claimant of the effects of this agreement.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge