APPEAL NO. 000078

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On December 16, 1999, a contested case hearing (CCH) was held. The issues at the CCH were:

1. Does the compensable injury sustained on _____, extend to an injury to the Claimant's [respondent] right hip (contest by employer)?

2. Does good cause exist to relieve the employer from the effects of the agreement signed on June 21, 1999?

The hearing officer determined that claimant had "injured his right hip in course and scope of employment" on _____; that claimant's compensable injury (not clearly defined but apparently a low back injury) extended to claimant's right hip; and that "[g]ood cause does not exist to relieve the employer from the effects of the agreement signed on June 21, 1999."

The (employer) (referred to as State Agency 1) appealed, contending that osteoarthritis is an ordinary disease of life to which the general public is exposed; that the hearing officer erred in refusing to add an issue; that the "employer," State Agency 1, was not bound by an agreement between claimant and "the carrier" (identified as the State Office of Risk Management (SORM); that claimant failed to establish that his right hip osteoarthritis rises to the level of an occupational disease; and that the hearing officer erred in admitting unsigned, unauthenticated medical reports. State Agency 1 requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds to State Agency 1's appeal, cites evidence to support his position, and urges affirmance.

DECISION

Affirmed.

First, we will address who the parties are and their status. Claimant was employed as a trooper by State Agency 1. After claimant filed his claim, the case was referred to the SORM. SORM appeared at a benefit review conference (BRC) in this case on behalf of State Agency 1 on June 17, 1999, at which time it entered into a BRC agreement signed by claimant and an attorney representing SORM accepting liability for "an injury to the Claimant's right hip." Shortly thereafter, State Agency 1 disagreed with the agreement and, apparently, sought assistance from the Office of the Attorney General. Subsequently, an attorney from Office of the Attorney General's Tort Litigation Division was assigned to represent State Agency 1.

To establish that State Agency 1 is the "employer," the Assistant Attorney General cites Section 501.002(b), which provides that for "purposes of Chapter 451, the individual

agency shall be considered the employer." We note that Chapter 451 deals with "Discrimination Prohibited" and provides that employees may not be discharged because they have filed a workers' compensation claim. Chapter 412 deals with the SORM. Section 412.011(a) provides, in part, that the SORM is created to administer the government employees' workers' compensation program. Section 412.011(4) provides that the SORM shall administer the workers' compensation insurance program for state employees established under Chapter 501. Section 412.041(g) provides that "[i]n administering and enforcing Chapter 501 [Workers' Compensation Insurance Coverage for State Employees . . .], the director [of the SORM] shall act in the capacity of insurer" for dates of injury on or after September 1, 1995. Chapter 501 affords workers' compensation coverage for all state employees. Section 501.021 provides that "[a]n employee with a compensable injury is entitled to compensation by the director . . . ." Section 501.001(5) defines employee. Section 501.001(3) defines director as the director of the SORM. Since the SORM has statutory authority to administer the claims of State Agency 1 personnel and accepted liability for the injury, that is binding on the State of Texas, which is the ultimate self-insured employer. We need not get involved with which specific state agency's budget will absorb the cost of the claim. We note that the Assistant Attorney General attempted to make a similar distinction between an employer and carrier in Texas Workers' Compensation Commission Appeal No. 992620, decided January 6, 2000 (Unpublished), where the (employer A) was the self-insured and a distinction was sought to be made between the employer A and a specific campus which was argued to be the employer (much as the self-insured in this case argues that State Agency 1 is the employer and SORM is the carrier). Appeal No. 992620 cited the general definition section, Section 401.011(27)(c), which defines insurance carrier to include "a governmental entity that self-insures, either individually or collectively." (Emphasis supplied in Appeal No. 992620.) Similarly, in this case, we hold that the State of Texas is the self-insured under Chapter 501 by statute. Section 412.011 has assigned the SORM "to administer the government employees workers' compensation insurance and the state risk management programs." State Agency 1 is bound by the agreement entered into by the SORM with claimant.

As factual background, claimant is a 38-year-old man who played competitive high school and college basketball, who was drafted 43rd in the 1984 National Basketball Association (NBA) draft, and who played professional basketball both in the NBA and overseas for 10 or 11 years. During that time, claimant sustained some ankle and knee injuries, but denied any prior hip injury. After retiring from professional basketball, claimant applied for a position with State Agency 1. Claimant testified that during the selection process he passed two physical examinations (apparently one was a prescreening examination) which consisted of, among other things, running three miles in 28 minutes, doing 25 push ups in one minute, five chin ups without rest and 40 sit ups in one minute. After having been accepted into the training program in August/September 1997, claimant began what appeared to be a nine-month training period which included rigorous "high intensity" physical exercise training. Claimant said that in December 1997 he began to experience right groin, low back, buttock and hip pain. Claimant initially saw Dr. S, who, in a report dated March 2, 1998, diagnosed sciatica, prescribed medication and released claimant back to work. That treatment did not help and, for a time, claimant treated with Dr.

R, his wife and a family practice physician with some 14 years experience. Eventually, claimant saw Dr. J, an orthopedic and sports medicine specialist, who diagnosed osteoarthritis in a report dated December 11, 1998. Claimant was subsequently examined by the self-insured's required medical examination doctor, Dr. P, who, in a report dated April 8, 1999, had a diagnosis of:

> Post traumatic injury right hip probably secondary to repetitive microtrauma during strenuous training - chronic LS pelvis sprain and strain with mild degenerative disease low back.

Dr. P commented:

> According to the history is it quite clear the patient seems to have developed a serious right hip problem secondary to repeated microtrauma probably related to the jogging and running during training for the state trooper division.

In response to some specific questions, Dr. P stated:

> In summary, the patient's current problem is multifactorial but in all medical probability the current symptoms and signs are related to repeated microtrauma while training and jogging.

A BRC was scheduled with notice going to both the SORM and State Agency 1. No one from State Agency 1 attended the BRC and the agency was represented by the SORM. In a Benefit Dispute Agreement (TWCC-24) dated June 17, 1999, claimant and SORM agreed:

> The compensable injury sustained on [_____] extends to an injury to the claimant's right hip.

The agreement was signed by the claimant, a representative of the SORM and the benefit review officer (BRO). In an "Employers' Contest of Compensability," dated July 23, 1999, State Agency 1, through their "Risk Manager," contested compensability of the "osteoarthritis/ degenerative changes of the claimant's right hip." Exactly how or when the Attorney General's participation on behalf of State Agency 1 began is not evident; however, the self-insured filed a "Request to Have [an] Issue Addressed and Response to [BRO] Report," dated December 8, 1999, requesting the addition of an issue of whether claimant's right hip condition, "osteoarthritis[,] [is] an ordinary disease of life." The self-insured argued that "Carrier [meaning the employer, State Agency 1] was not present at the BRC." A Texas Workers' Compensation Commission hearing officer found that "there is not good cause and the request was not timely filed . . ." and refused to add the issue in an order dated December 10, 1999. State Agency 1 renewed its request at the December 16, 1999, CCH and that request was also denied by this hearing officer.

As previously indicated, the hearing officer found that the compensable injury extends to the right hip. The hearing officer did not discuss or reference the medical evidence. We can, and do, affirm the hearing officer's decision on this issue, based on the BRC agreement. The hearing officer further found that "[g]ood cause does not exist to relieve the employer [actually the self-insured] from the effects of the [BRC] agreement. . . . We also hold that decision to be supported by the evidence. Section 410.030(a) provides, in part, that a BRC agreement, signed in accordance with Section 410.029, is binding on the carrier or, in this case, the self-insured, through the conclusion of all matters relating to the claim, absent a finding of fraud, newly discovered evidence, or other good and sufficient cause. *See also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(d)(1) (Rule 147.4(d)(1)). The self-insured contends that it had good cause for being relieved of the effects of the agreement because State Agency 1 had not agreed to the agreement and had not signed the agreement. We will review the hearing officer's determination on an abuse of discretion standard whether good cause was shown to be relieved of the BRC agreement. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. In that we have held that the SORM, under Section 412.011, has been assigned to administer the state's (self-insured) risk management program, we find no abuse of discretion in the hearing officer's determination that no good cause exists to relieve State Agency 1 from the effects of the agreement executed by the SORM.

The self-insured's appeal on behalf of State Agency 1 first argues that the hearing officer did not make supportive findings in his ultimate findings and did not address whether osteoarthritis is an ordinary disease of life. This appeal is almost entirely based on the premise that State Agency 1, as an "employer," has an independent right to dispute the SORM's agreement on its behalf to accept liability for the right hip osteoarthritis in the BRC agreement. As we discussed at the outset, we are holding that the self-insured is the State of Texas, not just an individual agency, and while State Agency 1 may be considered an "employer" for discriminatory practices under Chapter 451, that does not give it status to dispute an agreement entered into on its behalf by the SORM, the agency authorized to act for the State of Texas for workers' compensation and risk management matters. Consequently, we decline to consider whether or not, under these circumstances, claimant's right hip osteoarthritis is an ordinary disease of life (as a matter of law); whether claimant had a greater degree of exposure to that disease than the general public; and whether the osteoarthritis was an occupational disease. The SORM, acting on behalf of the State of Texas, accepted liability for the claimed injury to claimant's right hip and we decline to review it further.

Similarly, we decline to consider whether State Agency 1 properly or timely raised the question of adding an issue. If State Agency 1 has an issue of how the SORM administered the claim on its behalf, they should do so in another forum. We also decline to analyze whether the medical evidence in this case, including Dr. R's testimony and Dr. P's report, establishes that claimant's right hip osteoarthritis may have been aggravated and/or accelerated by claimant's training because the SORM accepted liability for it.

The self-insured also assigns error to the fact that the hearing officer admitted some of Dr. J's reports into evidence, even though they were unsigned and "unauthenticated." To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was, in fact, an abuse of discretion, and also that the error was reasonably calculated to cause, and probably did cause, the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). The complained-of reports include what appears to be a computer-generated report giving a diagnosis and code of "osteoarthrosis," which has the typed initials "JSJ," five Specific and Subsequent Medical Reports (TWCC-64) with computer-generated attachments, all ending with the typed initials of "JSJ" and a last page report signed by Dr. J. Section 410.165(b) provides that the hearing officer "shall accept all written reports signed by a health care provider." Only the last page of Dr. J's reports was actually signed, while the other computer-generated TWCC-64s have only Dr. J's typed initials. Even if the admission of these reports was an abuse of discretion, Dr. J's unsigned reports added little, if anything, to the outcome of this case and certainly would not have resulted in a different outcome had they been excluded.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's challenged determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge