APPEAL NO. 000204

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 4, 2000, a contested case hearing (CCH) was held. With regard to the sole issue before him, the hearing officer determined that good cause did not exist to relieve the appellant (claimant) from the effects of the CCH agreement entered into per the decision and order signed on July 2, 1997. The claimant appeals, urging that the hearing officer's decision is incorrect and should be reversed and that the hearing officer should have developed the facts more diligently in determining the claimant's understanding and mental state of mind. The respondent (self-insured) replies that the claimant has not disputed any finding or conclusion and has presented nothing for review on appeal; that the claimant had the burden to present sufficient evidence to establish good and sufficient cause to set aside the July 2, 1997, agreement; and that there is factually sufficient evidence to support the hearing officer's findings of fact and conclusions of law.

DECISION

A new decision is rendered that the Texas Workers' Compensation Commission (Commission) does not have jurisdiction.

We first address the sufficiency of the claimant's appeal to invoke our jurisdiction. The claimant's appeal states in pertinent part:

> The hearing officer's decision is incorrect and should be reversed. The hearing officer should have developed the facts more diligently in determining the Claimant's understanding and mental state of mind. It was the Claimant's understanding that the issue of whether the Claimant's depression was the result of the compensable injury of _____ could be addressed at a later date, since the agreement stated that it was not ripe for adjudication.

Section 410.202(c) provides that "[a] request for appeal or a response must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought." The Appeals Panel has read this requirement broadly, particularly in cases involving an unrepresented claimant where it is relatively evident what issues the claimant is appealing. Texas Workers' Compensation Commission Appeal No. 960775, decided July 18, 1996 (Unpublished). While we would not customarily expect to see such a general appeal from a represented claimant, as is the case here, we have held that appeals which lack specificity will be treated as challenges to the sufficiency of the evidence, even those where the claimant was represented. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. We find that the appeal is adequate in the present case to invoke our jurisdiction and raise the issue of whether there was sufficient evidence to support the hearing officer's decision.

A CCH was held on July 2, 1997, to address the following issues:

1. Is the Claimant's depression a result of the compensable injury sustained on _____?

2. What is the Claimant's date of maximum medical improvement [MMI]?

3. What is the Claimant's impairment rating [IR]?

Present at the CCH were the claimant, the claimant's attorney, the self-insured's attorney, and an employer representative, Mr. W. The hearing officer rendered a decision on July 2, 1997, which indicates that the parties made the following oral agreement on the record:

1. The issue, of whether the Claimant's depression is a result of the compensable injury sustained on _____, is not ripe for adjudication.

2. The claimant's date of [MMI] is April 12, 1996 as certified by [Dr. B].

3. Claimant's [IR] is twelve percent as assigned by [Dr. B].

That decision, dated July 2, 1997, was not timely appealed and became final under the provisions of Section 410.169. A CCH was held on June 15, 1999, to resolve the issue of whether the claimant's depression and anxiety resulted from the compensable injury sustained on _____. The hearing officer determined that the claimant's depression and anxiety resulted from the compensable injury sustained on _____, and this was affirmed in Texas Workers' Compensation Commission Appeal No. 991409, decided September 24, 1999 (Unpublished).

At the CCH held on January 4, 2000, the claimant testified that she was not aware that the self-insured was going to accept her depression and anxiety as part of the _____, compensable injury until after the CCH on June 15, 1999. The claimant testified on cross-examination that she did not remember the CCH on July 2, 1997; did not remember entering into an agreement at the CCH on July 2, 1997; and has more than a 12% IR. The claimant argues that she has good cause to be relieved of the agreement and should be allowed to go back to the designated doctor to have her depression and anxiety included in the IR.

The self-insured presented the testimony of Mr. W. Mr. W testified that at the time of the CCH on July 2, 1997, the claimant had received a zero percent IR from Dr. C, the designated doctor, and a 12% IR from another doctor. According to Mr. W, the self-insured did not think that the zero percent IR was fair, so it agreed to the 12% IR. The self-insured argues that the claimant was represented by an attorney at the CCH on July 2, 1997; that the claimant was aware of all issues and chose to resolve them by agreement; and that the claimant is bound by the July 2, 1997, decision.

The claimant asserts that the hearing officer should have developed the facts more diligently in determining the claimant's understanding and mental state of mind. Pursuant to Section 410.163(b), the hearing officer has a duty to ensure "the full development of facts required for the determinations to be made." Our review of the record indicates that the hearing officer fulfilled that duty at the CCH on January 4, 2000. The claimant was represented by an attorney who had the opportunity to develop testimony concerning the claimant's state of mind, if he felt it was warranted.

Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal. In the case before us, the decision of the hearing officer dated July 2, 1997, had not been timely appealed and had become final under the provisions of Section 410.169. The Appeals Panel has previously addressed the question of finality of the decision of a hearing officer regarding benefits when there has not been a timely appeal or the finality of a decision of the Appeals Panel when judicial review has not been timely sought and a party argues that some provision of the 1989 Act provides a method for the Commission to consider changing a determination it has made. In Texas Workers' Compensation Commission Appeal No. 951901, decided December 22, 1995 (Unpublished), the claimant and carrier entered into an oral agreement at the CCH that the carrier was entitled to 23% contribution because of a prior compensable injury and the hearing officer's decision was not timely appealed and became final. The claimant argued that he should be relieved of the effects of the agreement because supplemental income benefits (SIBS) were not discussed and he had no knowledge that the agreement would impact his SIBS. The hearing officer determined that good cause did not exist to relieve the claimant from the effects of the agreement and the decision and order issued was final and binding on both parties. The Appeals Panel affirmed the hearing officer's decision, citing Texas Workers' Compensation Commission Appeal No. 94960, decided September 1, 1994. In Appeal No. 94960, the claimant attempted to reopen the issues of MMI and IR because of back surgery that was performed after the decision of the hearing officer on MMI and IR had become final because it had not been timely appealed. The Appeals Panel affirmed the determinations of the hearing officer that the earlier decision of the hearing officer had become final and that the issues of MMI and IR could not be reopened and wrote:

> It is clear that this statute expressly contemplates and authorizes the actions that a court may take in review of a decision of the Appeals Panel on the basis of substantial change in condition. There is no counterpart statute authorizing the agency to reopen a final, unappealed decision of a hearing officer. . . . Administrative agencies are creatures of statute, and may exercise only the authority expressly granted, or necessarily implied from such express grants. Sexton v. Mount Olive Cemetery Ass'n, 720 S.W.2d 129 (Tex. App.-Austin 1986, writ ref'd n.r.e.). . . . We note here that this is distinguishable from the situation where there is an ongoing dispute resolution proceeding before the Commission on the issues of impairment and/or MMI. *See* Texas Workers' Compensation Commission Appeal No. 94492, decided June 8, 1994.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(c) (Rule 147.4(c)) provides that an oral agreement reached during a CCH and preserved in the record is effective and binding on the date made. Rule 147.4(d) provides in part:

> A signed written agreement, or one made orally, as provided by subsection (c) of this section, is binding on:
>
> (1) a carrier and a claimant represented by an attorney through the final conclusion of all matters relating to the claim, whether before the commission or in court, unless set aside by the commission or court on a finding of fraud, newly-discovered evidence, or other good and sufficient cause[.]

The hearing officer applied Rule 147.4(d) and determined that the evidence presented did not result in a finding of good and sufficient cause necessary to relieve the claimant from the effects of the CCH agreement entered into per the decision and order signed on July 2, 1997. The evidence supports the hearing officer's determination that the evidence presented did not result in a finding of good and sufficient cause necessary to relieve the claimant from the effects of the CCH agreement entered into per the decision and order signed on July 2, 1997; however, the hearing officer did not have jurisdiction to determine whether the agreement should be set aside for good cause. We render a new decision that the decision of the hearing officer dated July 2, 1997, has become final and the Commission does not have jurisdiction to determine whether good cause exists to relieve the claimant from the effects of the CCH agreement entered into per the decision and order signed on July 2, 1997, which is final.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge