

APPEAL NO. 001886

On July 18, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issue by deciding that good cause does not exist to relieve the appellant (carrier) of the effect of the agreement dated April 18, 2000. The carrier requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. The respondent (claimant) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on _____. A medical report states that boxes fell on her at work that day. Dr. J, a licensed psychologist, performed a psychological evaluation of the claimant on July 10, 1999, and wrote that the claimant is suffering from symptoms of a generalized anxiety disorder and major depression. Dr. S evaluated the claimant on January 14, 2000, and wrote that the claimant has many nonwork-related psychiatric problems. On April 18, 2000, the claimant, the carrier's claims representative, and a Texas Workers' Compensation Commission field office manager, signed a Benefit Dispute Agreement (TWCC-24) in which the disputed issue is stated as: "Is the claimant's psychological condition related to the compensable injury of _____," and the resolution of that disputed issue is stated as: "Parties agree that the claimant's psychological condition is related to the compensable injury of _____."

The issue at the CCH was whether good cause exists to relieve the carrier of the effect of the TWCC-24 dated April 18, 2000. The carrier presented the testimony of Dr. P, a licensed psychologist, who testified regarding the differences between psychology and psychiatry and that the term "psychological condition" is broad, vague, and meaningless. The carrier also presented the affidavit of GB, the carrier's claims representative who signed the TWCC-24. GB states in her affidavit that she signed the TWCC-24 in reliance upon the representation of the ombudsman who was assisting the claimant at the time that the carrier had waived the right to dispute the psychological condition because it had not disputed the psychological condition within 60 days of written notice. GB further states that on April 25, 2000, she was informed by counsel that the 60-day waiver rule does not apply to extent-of-injury issues as of March 13, 2000, based on a recent rule change. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000. We note that the parties did not agree in the TWCC-24 that the carrier had waived its right to dispute the compensability of the psychological condition, but instead agreed that the psychological condition is related to the compensable injury.

The carrier contends, as it did at the CCH, that it has good cause to be relieved of the effect of the TWCC-24 under Section 410.030(a) (*see also* Rule 147.4(d)(1)) based on

“material misrepresentation and/or vagueness and ambiguity.” The hearing officer considered the evidence and arguments, made findings of fact adverse to the carrier’s contentions, and decided that good cause does not exist to relieve the carrier of the effect of the TWCC-24. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In Texas Workers’ Compensation Commission Appeal No. 94244, decided April 15, 1994, the Appeals Panel noted that it applies an abuse of discretion standard in reviewing a hearing officer’s decision on an issue of whether there is good cause to set aside an agreement. We conclude that the hearing officer’s decision is supported by sufficient evidence and that the hearing officer did not abuse his discretion in deciding that good cause does not exist to relieve the carrier of the effects of the TWCC-24.

The hearing officer’s decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge