

APPEAL NO. 020394
FILED APRIL 10, 2002

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 January 15, 2002. The hearing officer determined that the respondent's (claimant) disability started on March 30, 2001, and continued through the date of the CCH. The appellant (self-insured) disputes the determination of disability and the period thereof, based upon the assertion that an oral agreement was reached prior to the CCH by the parties, and argues the hearing officer abused his discretion by forcing the parties to participate in a CCH and then making the disability determination set forth above. The claimant replies, urging affirmance of the hearing officer, "unless the Appeals Panel finds the agreement of the parties is effective and binding."

DECISION

Reversed and rendered.

We note first that the lists of exhibits set forth in the Decision and Order are incorrect. The claimant offered 13 exhibits, which were described for the record and admitted by the hearing officer without objection; the self-insured offered 10 exhibits, which were described for the record and likewise admitted by the hearing officer without objection. Exhibits which match the number and descriptions in the record are contained in the case file that came to us for review. The exhibits listed in the Decision and Order do not match in number or description, and we conclude that the list is the result of an administrative error made in the preparation of the written Decision and Order. Since we have all the exhibits and can review the entire record, we view any error in listing the exhibits as harmless.

The CCH proceedings in this case were unusual. The hearing officer makes absolutely no reference in the Decision and Order to any oral agreement between the parties, or to any discussion between the parties concerning an oral agreement. However, on the record, the parties talked about making an agreement concerning disability, the only CCH issue. The hearing was briefly recessed to allow the parties to discuss whether an agreement could be reached. When the parties returned to the hearing room, they informed the hearing officer that they had reached an agreement. The agreement was that "the claimant had disability from July 11, 2001, through the date of the hearing" (tape 1, side A, counter number 510). This was a complete agreement resolving the disability issue in dispute. Rather than accepting the agreement, the hearing officer asked questions about the agreement and the rationale for entering the agreement. The parties responded that agreements are permitted and that "the claimant thinks it is in her best interest to take this versus litigating it." The hearing officer said that he could not approve any agreement that was "just a compromise to make a compromise and get out of here," and that "the [Texas Workers' Compensation] Commission says that we are supposed to award benefits per the statute." With that statement, the hearing officer called for stipulations and exhibits, then

heard testimony from the claimant and from a witness for the self-insured.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(c) (Rule 147.4(c)) provides that “[an] oral agreement reached during a benefit [CCH] and preserved in the record is effective and binding on the date made.” But even where the parties make an agreement on the record at a CCH, a hearing officer may not permit an agreement to be made that is contrary to the 1989 Act and the rules. For examples of agreements contrary to the 1989 Act and rules, Commission Advisory 94-06 is instructive. Here the parties reached an agreement for perhaps the most important rationale, because they believed it was in their best interest rather than risking a different result through litigation. In the case at hand, the period of disability was unknown and there was nothing about the agreement that was inconsistent with the 1989 Act or the rules. The hearing officer abused his discretion in requiring the parties to proceed with the hearing and issuing a Decision and Order inconsistent with the agreement of the parties.

The hearing officer’s decision that the claimant had disability starting on March 30, 2001, and continuing through the date of the CCH is reversed and a new decision rendered that, in accordance with the agreement of the parties, the claimant had disability starting on July 11, 2001, and continuing through the date of the CCH.

The true corporate name of the insurance carrier is **RCH PROTECT COOPERATIVE** and the name and address of its registered agent for service of process is

**KEVIN REID
1801 SOUTH MOPAC, SUITE 300
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Philip F. O’Neill
Appeals Judge

Edward Vilano
Appeals Judge