

APPEAL NO. 021089  
JUNE 17, 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 April 10, 2002. The following issues were before the hearing officer: (1) did the appellant (claimant) sustain a compensable injury on \_\_\_\_\_; and (2) did the claimant have disability resulting from an injury on \_\_\_\_\_? The hearing officer found that the claimant withdrew his case, understanding he gave up his rights to any medical or income benefits and any rights to further pursue this claim. Because of this, the hearing officer determined that the claimant did not sustain a compensable injury on \_\_\_\_\_, and that he did not have disability. The claimant appeals these determinations, asserting that he injured his back at work and stating that he did not agree to withdraw his case or give up his rights to benefits. The respondent (carrier) urges affirmance.

DECISION

Reversed and remanded.

Under the unique circumstances of this case, we hold that the hearing officer erred in determining that the claimant did not sustain a compensable injury on \_\_\_\_\_, and that he did not have disability. As indicated above, the hearing officer reached these determinations solely after finding that the claimant withdrew his case and gave up his rights to any medical or income benefits and any rights to further pursue this claim. Upon review of the proceedings below, we cannot agree that the claimant willingly withdrew his case or otherwise gave up his legal rights with regard to the claimed injury. We likewise cannot agree that the hearing officer had the authority to dismiss the claim "with prejudice."

The question as to whether the claimant should withdraw his case was first raised by the carrier's attorney on cross-examination of the claimant. Due to conflicting testimony concerning the claimant's involvement in a motor vehicle accident, the carrier's attorney accused the claimant of giving perjured testimony and then asked, "Do you want to withdraw your claim for worker's compensation now on the record, or do you want the hearing officer to make a final decision in this case?" The claimant's attorney objected to the question, but the hearing officer allowed it and offered to go off the record to allow the attorney to discuss the matter with the claimant. The carrier's attorney, referring back to the claimant's prior testimony that he is an immigrant, added, "You may want to also explain to him the ramifications if I notify the [Immigration and Naturalization Service] INS of his perjury testimony in this case, considering he's got an application pending to stay in this country." The claimant's attorney pointed out that identification of the claimant to the INS would violate statutes relating to the confidentiality of claim information. The carrier's attorney responded, "Let me tell you this: I've had a district court judge do it before, and I think worker's comp[ensation] can."

The hearing officer went off the record without responding to the confidentiality argument and the implication that the hearing officer could be requested to notify INS. When the CCH resumed, the claimant's attorney said that his client wished to withdraw his claim but that he wished to make a record on the claimant's intentions. Questioning was, however, primarily conducted by the carrier's attorney. The claimant responded by indicating that he was not inclined to agree as part of any withdrawal that he had not been injured.

After hearing an objection from the claimant's attorney with regard to further questioning about surrendering any contention of an injury, the hearing officer stated, "We got to, we got to try to make this a withdrawal with prejudice so that he doesn't come back at a later date. That's what [carrier's attorney] is trying to do." Further discussion ensued wherein the claimant's attorney argued that simply withdrawing the claim should be enough.

The hearing officer then questioned the claimant, asking whether the claimant agreed to withdraw the issues; no response was given to at least two of his questions in this regard. The claimant stated unambiguously that he wished to continue to pursue his claim. At this point, the claimant's attorney indicated that his client could not make up his mind and they should just finish the CCH. However, the hearing officer, at this point, closely questioned the claimant about whether he understood he was under oath. The claimant, a Spanish speaker, turned to his interpreter and said, "they try to control everything." The hearing officer denied that he was trying to control "everything" and told the claimant that it was his decision.

The claimant apologized and said, "Well, we can terminate it." The hearing officer then warned the claimant that he was terminating his rights to any benefits for this claim, to which the claimant responded, "I'm very confused. I'm very confused. I really don't understand what I should do. And I'm confused. I don't know what I'm doing." The claimant's attorney then said that he had been getting these same responses off the record from the claimant. The hearing officer then advised postponing the CCH to another date because he did not want "wishy-washiness" in the decision to withdraw the case.

The hearing officer, addressing the carrier's attorney, stated, "I just want [claimant] to make this informed decision. You have got him over a barrel. I think we can probably finish up, but I don't want him to make that choice without understanding everything that's going on." At this point, the claimant's attorney asked for another recess and when the CCH resumed, indicated that the claimant wanted to terminate his case. When asked after this whether he wanted to drop the case and whether he understood that he was giving up his rights to benefits for this claim, the claimant answered, "Yes, I understand." The claimant said he did not need anymore time to think about it.

Regardless of what was or was not said off the record, it is apparent that the events leading to the claimant eventually withdrawing his case were likely precipitated

by threats from the carrier's attorney to report the claimant to the INS. However, we have reviewed the pertinent confidentiality statutes, Sections 402.083, 402.084, and 402.085, and find no exception that would allow the hearing officer or either attorney to *sua sponte* disclose any testimony pertaining to immigration status to the INS. Immigration status is irrelevant to the right to claim workers' compensation benefits; Section 406.092(a) states that resident and nonresident aliens are entitled to benefits under the 1989 Act.

We note that the absence of any instructions by the hearing officer to curtail such threats could be viewed as contributing to the belief that adverse action could be taken with the INS. Under the circumstances in this case, we do not agree with the hearing officer's findings that the claimant willingly withdrew his case or otherwise intended to give up his legal rights with regard to the claimed injury. The hearing officer's finding to that effect is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Accordingly, such finding cannot form the basis for a determination that the claimant did not sustain a compensable injury on \_\_\_\_\_, and did not have disability.

Accordingly, the hearing officer's decision is reversed and remanded for further proceedings. Although we do not find wrongdoing by the hearing officer, the Hearings Division may wish to consider assignment of another hearing officer to avoid the appearance of linkage to the prior proceeding in which the claimant felt intimidated.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **TRINITY UNIVERSAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DONALD GENE SOUTHWELL  
10000 N. CENTRAL EXPRESSWAY  
DALLAS, TEXAS 75265.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Robert W. Potts  
Appeals Judge