

APPEAL NO. 021319
FILED JULY 15, 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 was held on April 22, 2002. The hearing officer resolved the disputed issues by determining that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the 14th compensable quarter; that his correct impairment rating (IR) is 21%; and that good cause does not exist for relieving the appellant (carrier) of the effects of the agreement entered into by the parties on March 1, 2000. On appeal, the carrier contends that good cause exists for relieving it from the effect of the March 1, 2000, agreement, and that the claimant's correct IR is 8%. The appeal file contains no response from the claimant, nor has he appealed the determination that he is not entitled to SIBs.

DECISION

Affirmed.

The evidence reflects that the parties entered into a signed agreement on March 1, 2000, indicating that the claimant was entitled to SIBs for the 1st through 6th compensable quarters. The document stated that the carrier made the agreement "with the understanding that in doing so it does not waive its right to pursue the issue of compensability of the psychological condition currently pending in District Court." This referred to its appeal of the Texas Workers' Compensation Commission (Commission) Appeals Panel decision which upheld the compensability of depression as an extent of the claimant's injury. The agreement contains no similar provision relating to any IR dispute and is silent on the issue. No evidence was offered that the district court case also included a dispute over IR or that the carrier filed a dispute over IR with the Commission to preserve any error. A short judgment signed by the district judge on October 19, 2001, determined that the claimant's depression was not the result of his compensable _____, injury.

The claimant had a 21% IR assigned to him, 15% of which was assigned for the psychological condition. The report assigning this rating is dated September 8, 1999, and was rendered by a designated doctor.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(g) (Rule 130.102(g)), effective January 31, 1999 (and not changed by further amendments to the rule in November 1999), provides:

Maximum Medical Improvement [MMI] and [IR] Disputes. If there is no pending dispute regarding the date of [MMI] or the [IR] prior to the expiration of the first quarter, the date of [MMI] and the [IR] shall be final and binding.

We agree that the hearing officer's application of Rule 130.102(g) to the facts of this case is correct. The carrier failed to preserve a dispute over IR at the Commission or in its benefit review conference agreement, although it could have done so timely and without waiting for the outcome of the district court proceeding pending at the time the agreement was signed. The hearing officer did not err in determining that good cause does not exist for relieving the carrier of the effects of the signed agreement and that the 21% IR assigned to the claimant became final for purposes of SIBs under Rule 130.102(g).

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of the insurance carrier is **TPCIGA for United Pacific Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**TIMOTHY J. McGUIRE
633 NORTH STATE HIGHWAY 161, SUITE 200
IRVING, TEXAS 75038.**

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Roy L. Warren
Appeals Judge