

APPEAL NO. 022353  
FILED OCTOBER 31, 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 August 26, 2002. The hearing officer determined that the respondent's (claimant) compensable (right carpal tunnel syndrome (CTS)) injury "includes the diagnosis of right ulnar tunnel syndrome and right cubital tunnel syndrome [CuTS]" and that good cause exists to relieve the claimant from the effects of an agreement signed on May 8, 2001.

The appellant (carrier) appeals, principally on the ground that no good cause exists to relieve the claimant of the agreement and secondarily that the claimant's current complaints are unrelated to the compensable injury. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant, an auto technician, sustained a compensable repetitive trauma injury on \_\_\_\_\_. The carrier accepted a right CTS injury. The claimant had a right CTS release on October 3, 2000, but had continuing complaints. A pain diagram the claimant completed indicated various pain in the claimant's right upper extremity from his hand to his upper shoulder and included the claimant's forearm and elbow. On May 8, 2001, the parties entered into a Benefit Dispute Agreement TWCC-24), whereby the parties agreed that the "compensable injury is limited to the right shoulder and the right [CTS]." The claimant was not represented by an attorney and the TWCC-24 was signed by the claimant, the carrier's representative and the benefit review officer. The claimant subsequently had right shoulder surgery on December 6, 2001. The claimant testified that he obtained some relief from the surgery but that he continued to have complaints of pain and loss of strength in his arm. A second EMG<sup>1</sup> was performed on April 4, 2002. That EMG was interpreted as showing right "[CuTS] as well as an ulnar tunnel syndrome." The claimant's treating doctor opined that "these peripheral compressive neuropathics are directly related to [the claimant's] work." There is no medical evidence to the contrary.

Regarding the extent-of-injury issue, there was conflicting evidence. The carrier argues that the first EMG performed on July 28, 2000, was negative for the ulnar nerve and cubital problems and therefore such an injury was "not on the alleged date of injury." However, we note that that EMG was two months prior to the date of injury. In any event these are the sort of contradictions and inconsistencies that the hearing officer is charged to resolve. We hold the hearing officer's determinations on this point to be not against the great weight of the evidence.

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<sup>1</sup> Another EMG had been performed prior to the date of injury in July 2000.

More problematic is the relief from the binding effects of the agreement that the hearing officer has given the claimant. Section 410.030(b) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(d)(2) (Rule 147.4(d)(2)) both provide that a TWCC-24 is binding on an unrepresented claimant through the conclusion of all matters related to the claim while the claim is pending before the Texas Workers' Compensation Commission (Commission) unless the Commission "for good cause" relieves the claimant of the effects of the agreement. The test for the existence of "good cause" is that of ordinary prudence. The hearing officer considers whether the claimant exercised the same degree of diligence as an ordinary prudent person would exercise in the same or similar circumstances, to preserve his rights. Texas Workers' Compensation Commission Appeal No. 92426, decided October 1, 1992. Whether a claimant has demonstrated good cause for setting aside a TWCC-24 is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93984, decided December 9, 1993; Texas Workers' Compensation Commission Appeal No. 992534, decided December 30, 1999. In this case the hearing officer commented on the claimant's testimony that he did not know what was causing his arm to hurt, and that he had not been diagnosed with an elbow problem until the April 2002 EMG. The carrier argues that it accepted a disputed shoulder injury in exchange for limiting the compensable injury to the right CTS and right shoulder. The factor for the hearing officer to consider was whether the claimant exercised the diligence of an ordinarily prudent person in signing the agreement. The carrier cites several Appeals Panel decisions where under somewhat similar circumstances other hearing officer's have found no good cause. However we point out that in those cases, the Appeals Panel was affirming a hearing officer's decision rather than finding it so against the great weight as to be reversible or as an abuse of discretion. The hearing officer could have believed that a reasonable person would have relied on his doctor in thinking that his elbow pain was caused by his shoulder condition and that the claimant did not have before him the information necessary to make an informed choice at the time he signed the TWCC-24.

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

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

**HAROLD FISHER - PRESIDENT  
3420 EXECUTIVE CENTER DRIVE, SUITE 200  
AUSTIN, TEXAS 78731.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Veronica Lopez  
Appeals Judge