APPEAL NO. 031095
FILED JUNE 12, 2003

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 1, 2003. With respect to the single issue before her, the hearing officer determined that good cause does not exist to relieve the appellant (claimant) from the effects of the benefit dispute agreement (BDA) signed on October 16, 2002. In her appeal, the claimant contends that the hearing officer erred in determining that good cause does not exist for relieving her from the effects of the BDA. In addition, the claimant contends that the hearing officer erred in denying the request to subpoena the benefit review officer (BRO) who presided over the benefit review conference (BRC) where the BDA was executed and in denying a motion for a continuance. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Initially, we consider the claimant's assertion that the hearing officer erred in denying a request to subpoena the BRO who presided over the BRC where the BDA was executed and in denying a request for a continuance. The file forwarded to the Appeals Panel reflects that the hearing officer denied a request to subpoena the BRO and a request for a continuance on March 26, 2003, and March 31, 2003, respectively. However, the claimant did not renew her request for a subpoena or a continuance at the hearing and, as such, she did not preserve any error associated with the denial of those requests for purposes of appeal.

The hearing officer did not err in determining that good cause does not exist to relieve the claimant of the effects of the BDA executed on October 16, 2002. Section 410.030(b) provides that a BDA is binding on an unrepresented claimant through the conclusion of all matters relating 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." *See also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(d)(2) (Rule 147.4(d)(2)). Whether good cause exists is a matter left up to the discretion of the hearing officer, and the determination will not be set aside unless the hearing officer abused her discretion, i.e., acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994, citing Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have held that the appropriate test for the existence of good cause is that of ordinary prudence; that is, the degree of diligence as an ordinarily prudent person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 92426, decided October 1, 1992.

The claimant argued that good cause existed to relieve her from the effects of the BDA because she did not understand the agreement, because she made the agreement because of "misrepresentations" made by the BRO, and because the BRO "coerced" her to execute the agreement. The hearing officer was not persuaded that the claimant demonstrated that good cause existed to relieve her from the effects of the BDA. To the contrary, the hearing officer believed that the evidence demonstrated that the claimant understood the terms of the agreement and voluntarily entered into the agreement "because she was eager to put these issues behind her and move on with her life, apparently having been recently enrolled in school." In view of the evidence presented, we cannot conclude that the hearing officer abused her discretion in determining that good cause does not exist to relieve the claimant of the effects of the BDA.

Lastly, we consider the claimant's argument that the BDA is "void as a per se violation of Rule 147.9." Rule 147.9 provides, in relevant part, that an agreement of settlement may not "limit or terminate the employee's right to medical benefits." That provision prohibits the parties from agreeing to limit medical benefits for a compensable injury. It does not, as the claimant argues here, limit the claimant and the carrier from resolving a dispute as to whether a different injury or condition is part of the compensable injury. In this instance, the BDA resolved a disputed issue as to whether cervical and lumbar herniations were part of the claimant's compensable injury by agreeing that they were not. Such an agreement does not violate Rule 147.9.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SD
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Margaret L. Turner
Appeals Judge