

APPEAL NO. 040917
FILED JUNE 14, 2004

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 March 31, 2004. With regard to the only issue before him the hearing officer determined that good cause does not exist to relieve the appellant (claimant) from the effects of the Benefit Dispute Agreement (TWCC-24) signed on June 24, 2003.

The claimant appeals, contending that Texas Workers' Compensation Commission (Commission) staff did not adequately assist or advise him regarding the subject TWCC-24, and/or that he was misled in signing the TWCC-24. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant had sustained a compensable injury on _____. In evidence is a TWCC-24 dated July 24, 2003, wherein in response to the disputed issue of whether the claimant sustained a compensable injury on "_____" the parties agreed that the "Claimant did sustain a compensable injury to the left elbow only on _____" (emphasis in the original). The TWCC-24 is signed by the carrier's representative Ms. L, the claimant, and the benefit review officer. The claimant acknowledged that he had read and signed the agreement and that the right arm was not included, but that he had asked about his right arm at the conclusion of the hearing. Both the claimant and Ms. L testified as to what occurred at the proceeding, with conflicting versions. The claimant seeks to be relieved from the agreement because he maintains that he also injured his right arm and that should have been included in the agreement.

The names of a number of Commission employees were mentioned. There was conflicting testimony regarding the conduct of the benefit review conference (BRC) and who said what to whom and when. Section 410.030 provides that an agreement signed in accordance with Section 410.029, regarding BRC Agreements, is binding on an unrepresented claimant through the conclusion of all matters relating to the claim, unless the Commission finds good cause to relieve the claimant of the effects of the agreement. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(d)(2) (Rule 147.4(d)(2)). The hearing officer found that the claimant failed to show good cause for relief from the agreement. We review good cause determinations under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 002251, decided November 8, 2000. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986) for the standard on abuse of discretion. We conclude that the hearing officer did not abuse his discretion in determining no good cause existed to relieve the claimant of the effects of his agreement.

The claimant also asserts error because the hearing officer refused to allow the claimant to call one of his prior ombudsman to testify. The procedure to be followed in calling Commission Staff is in the Procedure for Handling Requests for Commission Staff as Witnesses at [CCH's], Joint Procedure 8-4, Hearings/EEFS, dated August 4, 1997. We further note that the claimant failed to identify the individual in accordance with Rule 142.13(c)(1)(D). The hearing officer did not err in refusing to call the ombudsman as a witness.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not erroneous as a matter of law and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**VAN WAGNER COMPANY
1100 JUPITER ROAD, SUITE 121
PLANO, TEXAS 75074.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge