

APPEAL NO. 041843
FILED SEPTEMBER 20, 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 July 6, 2004. The parties reached an agreement on the disputed issues. Consistent with the parties' agreement, the hearing officer determined that: (1) the compensable injury of _____, includes an injury to the cervical spine in the form of a sprain/strain; (2) the appellant (claimant) had disability beginning January 22, 2002, and continuing through the date of the hearing; (3) the claimant reached maximum medical improvement (MMI) on January 22, 2002; (4) the claimant's impairment rating (IR) is 15%; and (5) the claimant is entitled to supplemental income benefits (SIBs) for the first quarter from December 4, 2003, through March 3, 2004. The claimant appeals the hearing officer's decision, seeking to set aside the underlying agreement. The respondent (carrier) urges affirmance.

DECISION

Reversed and remanded.

The following issues were certified in the Benefit Review Conference (BRC) Report: does the compensable injury of _____, include an injury to the cervical spine; did the claimant have disability from January 22, 2002, to the present, resulting from an injury sustained on _____; what is the date of MMI; what is the claimant's IR; and is the claimant entitled to SIBs for the first quarter from February 18, 2004, through May 18, 2004? Following the BRC, the parties reached an agreement on all disputed issues. The parties read the agreement into the record of the CCH, to wit, the compensable injury of _____, includes an injury to the cervical spine in the form of a sprain/strain; the appellant (claimant) had disability beginning January 22, 2002, and continuing through the date of the hearing; the claimant reached MMI on January 22, 2002; the claimant's IR is 15%; and the claimant is entitled to SIBs for the first quarter from December 4, 2003, through March 3, 2004. When questioned by the hearing officer, the claimant affirmed that the "agreement is fair and equitable to all parties involved considering the circumstances surrounding this case." The hearing officer approved the parties' agreement and issued a decision consistent with that agreement.

The claimant now appeals the hearing officer's decision, stating that the carrier's adjuster failed to inform him of an overpayment in the amount of \$43,000 until after the CCH. The claimant accuses the carrier's adjuster of "misleading and misinterpretation of the facts in [this] case" and asserts that he did not fully understand the consequences of the agreement, given the overpayment. The claimant further states, "[i]f I had had prior knowledge of any type of overpayment, I would not have agreed to the stipulation of these issues."

In its response to the claimant's appeal, the carrier argues, "The issue of any overpayments is a separate issue that should not affect the agreement and Decision." Underlying this argument is the assertion that the claimant's request to set aside the agreement is not properly before this tribunal. While we agree that the issue of recoupment is a separate issue not to be addressed in this proceeding, we do not agree that the request to set aside the agreement is improperly raised. In Texas Workers' Compensation Commission Appeal No. 000204, decided March 15, 2000, we held that the Texas Workers' Compensation Commission (Commission) lacks jurisdiction to set aside an agreement when the hearing officer's decision incorporating such agreement is not timely appealed and has become final. Accordingly, the claimant's request to set aside the agreement is a proper issue on appeal.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(c) (Rule 147.4(c)) provides that an oral agreement reached during a CCH and preserved in the record is effective and binding on the date made. Rule 147.4(d)(2) further provides, in part, that a such an agreement is binding on a claimant not represented by an attorney through the final conclusion of all matters relating to the claim while the claim is pending before the Commission, unless set aside by the Commission for good cause. Applying this standard, we have said that an agreement may be set aside on a showing of failure to understand the extent of the agreement, mutual mistake of fact, misrepresentation, or for other good cause shown. See Texas Workers' Compensation Commission Appeal No. 93706, decided September 27, 1993; Texas Workers' Compensation Commission Appeal No. 950180, decided March 21, 1995; Texas Workers' Compensation Commission Appeal No. 951812, decided December 4, 1995; Texas Workers' Compensation Commission Appeal No. 971027, decided July 18, 1997; Texas Workers' Compensation Commission Appeal No. 950791, decided July 3, 1995.

We reverse and remand the hearing officer's decision for a determination of whether good cause exists to set aside the parties' agreement. If good cause is found to exist, the hearing officer should take evidence and issue a decision on the merits of the certified issues. The hearing officer should not decide the merits of the issue of recoupment, as that issue is not properly before the hearing officer.

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 Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge