

APPEAL NO. 101008
FILED SEPTEMBER 16, 2010

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 June 21, 2010. With regard to the two issues before him the hearing officer determined that: (1) good cause exists to relieve the respondent (claimant) from the effects of the Benefit Dispute Agreement (DWC-24) of July 29, 2009, and (2) the compensable injury of _____, includes a disc bulge at L5-S1 and a right sacroiliac strain with right sacroiliitis.

The appellant (carrier) appeals the determination that the claimant was relieved from the effects of the DWC-24, contending that the claimant was aware of the effects of the agreement. The claimant responded, urging affirmance of the hearing officer's determination on this issue.

The hearing officer's determination that the compensable injury of _____, includes a disc bulge at L5-S1 and a right sacroiliac strain with right sacroiliitis has not been appealed and therefore has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable lumbar sprain/strain injury on _____, and that (Dr. S) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to evaluate the claimant for the compensable injury of _____, and to determine maximum medical improvement (MMI), impairment rating (IR) and ability of the claimant to return to work.

The claimant testified that he was carrying a box and tripped on a pallet injuring his back on _____. The claimant also testified that he reported his injury and was seen by several doctors. In evidence is an MRI performed on November 11, 2008, which shows a broad-based disc bulge at L5-S1. Dr. S, the designated doctor examined the claimant on January 9, 2009, and determined that the claimant was not at MMI and therefore no IR could be assigned. Dr. S again examined the claimant on June 24, 2009, and determined that the claimant reached MMI on June 24, 2009, with a five percent IR. The review of the medical history attached to that report references the November 11, 2008, MRI which showed the L5-S1 disc bulge.

The evidence reflects that the claimant, assisted by an ombudsman and not represented by an attorney, and the carrier entered into a DWC-24 on July 29, 2009. The parties agreed that: (1) the claimant had disability from December 16, 2008,

through February 5, 2009 “and for no other periods;” (2) the claimant reached MMI on June 24, 2009, as determined by the designated doctor; and (3) the claimant’s IR is five percent as determined by the designated doctor, Dr. S. The DWC-24 is dated July 29, 2009, and is signed by the claimant, the carrier’s attorney and the Division representative. The claimant testified that he and an ombudsman were in the Division field office and spoke with the carrier’s representative on a speaker telephone.

Section 410.030(b) provides that a DWC-24 is binding on an unrepresented claimant through the conclusion of all matters relating to the claim while the claim is pending before the Division unless the Division “for good cause relieves the claimant of the effects of the agreement.” See also 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 his discretion, i.e., acted without reference to any guiding rules or principles. Appeals Panel Decision (APD) 041692, decided August 31, 2004, 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. APD 042000, decided September 23, 2004.

The claimant testified that he should be relieved of the effects of the DWC-24 because subsequent to the agreement, additional medical conditions were diagnosed (which were the conditions named in the extent-of-injury issue on which the claimant prevailed) and that the carrier had denied additional medical treatment for the compensable injury. The claimant had the burden of proof to establish that the additional conditions diagnosed after the execution of the DWC-24, were mutually unknown to the parties and so material to the agreement that the claimant should be relieved from the agreement’s effects.

We hold that the claimant failed to meet his burden of proof. In doing so, we note that the L5-S1 disc bulge was diagnosed on November 11, 2008, over eight months prior to the execution of the DWC-24. We further note that Dr. S’s June 24, 2009, report, on which the DWC-24 is based, references the L5-S1 disc bulge along with other degenerative conditions at that level. Additionally, the claimant failed to present any evidence as to how a sacroiliac strain is more severe than a disc bulge at that same level, why the strain had not yet resolved, or how it was material to the agreement. Finally, the claimant offered no evidence as to the nature and severity of the condition referred to as sacroiliitis.

The hearing officer commented in the Background Information that:

Based on the probative evidence, including a fair reading and review of the medical evidence, the opinion of [Dr. S], and Claimant’s testimony, good cause exists to relieve Claimant from the effects of the [DWC-24] of July 29, 2009.

The hearing officer, in a finding of fact found:

Claimant was not represented by an attorney and did not have a complete understanding of the [DWC-24] that he entered into and signed on July 29, 2009.

The hearing officer does not explain how the claimant “did not have a complete understanding of the [DWC-24]” There is no evidence that the claimant misunderstood the terms of the DWC-24 or how he failed to understand the extent of the agreement. The claimant testified that the ombudsman, who was present at the signing, explained the effect of the agreement and that it was based on the designated doctor’s report. The claimant prevailed on the extent-of-injury issue and the DWC-24 does not limit the extent of the injury. Nor does the DWC-24 limit the claimant’s access to medical care. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury (which now specifically includes a disc bulge at L5-S1 and a right sacroiliac strain with right sacroiliitis) as and when needed. The carrier’s refusal to pay for medical care that the claimant believes he is entitled to is not a misunderstanding of the DWC-24.

We hold that the hearing officer abused his discretion, i.e., acted without reference to any guiding rules or principles. The hearing officer recites that the claimant “did not have a complete understanding of the [DWC-24] that he entered into” but the hearing officer does not explain how that was so. Our review of the record does not find evidence that supports the hearing officer’s finding that the claimant did not have a complete understanding of the DWC-24. Accordingly, we reverse the hearing officer’s determination that good cause exists to relieve the claimant from the effects of the DWC-24 of July 29, 2009, and we render a new decision that good cause does not exist to relieve the claimant from the effects of the DWC-24 of July 29, 2009.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge