APPEAL NO. 950370

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held by the hearing officer, (hearing officer), in (city), Texas, on February 1, 1995, to consider the sole disputed issue unresolved at the benefit review conference held on January 10, 1995, namely, the appellant's (claimant) impairment rating (IR). The hearing officer noted in his decision that claimant did not appear at the hearing, that before the presentation of evidence in the case claimant submitted a letter through his attorney indicating he no longer wished to pursue further benefits under the 1989 Act, and that based on that letter the hearing officer canceled the scheduled hearing and advised the parties he would issue a decision and order regarding this claim.

The decision and order includes findings that on January 31, 1995, claimant provided the Texas Workers' Compensation Commission (Commission) with a written communication indicating he no longer wished to pursue his claim, that claimant understood he had a right to a CCH and that he made an informed decision not to pursue workers' compensation benefits. The hearing officer concluded that claimant voluntarily failed to prosecute his case before the Commission. The hearing officer's decision stated that claimant had requested the withdrawal of the prosecution of his claim and that the issue in the claim was dismissed. In his timely request for review claimant asserts that he "did not intend to withdraw his claim" and desires to "reinstate his claim before the [Commission] to preserve his right to proceed in Texas in the event the (state) Workers Compensation Court determines it has no jurisdiction and/or venue over his workers' compensation claim." Claimant further asserts that he had a valid claim for compensation before the Commission and that "the only issue to be tried was Claimant's [IR]." Claimant asks the Appeals Panel to "reinstate his claim for compensation, reconsider and reverse the hearing officer's dismissal of his claim."

The respondent (carrier) first suggests that the appeal may be untimely and then goes on to oppose claimant's request to reinstate the claim. The carrier asserts estoppel pointing to the explicit language in the claimant's letter and to the carrier's reliance thereupon to its detriment. The carrier further asserts that the 1989 Act does not provide "for just putting a disputed issue `on the back burner' indefinitely" and that claimant "is without standing to dispute that this matter has now been adjudicated and that the finding of withdrawal of the claim is final."

DECISION

Affirmed.

Though not made a hearing officer exhibit (the appropriate procedure), the hearing officer expressly stated in his decision that he relied on claimant's letter which he referenced in a factual finding as a January 31, 1995, written communication to the Commission. Both parties refer to the letter on appeal and since neither take issue with its

not having been made an exhibit and since it accompanied the record, we will consider it and not remand the case for it to be made an exhibit. The content of the letter, dated January 31, 1995, and addressed to the hearing officer, is set forth below:

> Dear [hearing officer]:
>
> This is to advise that the Claimant has decided to withdraw any further request for benefits under the Texas Workers' Compensation Act. It is [claimant's] intention to pursue compensation under the laws of the State of [state].
>
> Therefore, it is our request that you take whatever actions necessary to show this case suspended.
>
> I am authorized to state to you that I have talked with [attorney], Attorney for the insurance carrier in this matter, and he has no objection to Claimant's request.
>
> Sincerely,
>
> [claimant's attorney]

The Texas Supreme Court has stated in Texas Employers Insurance Ass'n. v. Wermske, 162 Tex. 540, 349 S.W.2d 90 (1961), that "an attorney employed to prosecute a claim for workmen's compensation is the agent of the claimant, and his action or nonaction within the scope of his employment or agency is attributable to the client." In our view, this letter provides sufficient support for the dispositive factual findings and legal conclusion and we do not find them so against the great weight of the evidence as to be manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge