

APPEAL NO. 033267
FILED FEBRUARY 9, 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 November 5, 2003. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent's (claimant) compensable injury of _____, does not extend to include the lumbar spine, and that good cause does not exist to relieve the claimant of the effects of the Benefit Dispute Agreement (BDA) signed on November 12, 2002. The claimant appeals, contending that the hearing officer's determinations on the disputed issues are against the great weight and preponderance of the evidence. The respondent/cross-appellant (carrier) appeals the hearing officer's decision to the extent that it concludes that the compensable injury includes the lumbar spine. The carrier responded to the claimant's appeal. No response to the carrier's appeal was received from the claimant.

DECISION

Affirmed as reformed herein.

It is undisputed that the claimant sustained a compensable injury on _____. The claimant and the carrier entered into a BDA on November 12, 2002. At the time the claimant signed the BDA, he was not represented by an attorney, but had the assistance of a Texas Workers' Compensation Commission (Commission) ombudsman. The BDA reflects that the disputed issue was whether the _____, injury extends to the left hip, groin, and back. The agreed resolution is stated in the BDA as: "Parties agree the _____ injury extends to the left hip + groin and does not include the back. The hip is a sprain/strain." The claimant, a carrier's representative, and a benefit review officer signed the BDA. Section 410.030(b) provides in pertinent part that, if the claimant is not represented by an attorney, the agreement is binding on the claimant through the conclusion of all matters relating to the claim while the claim is pending before the Commission, unless the Commission for good cause relieves the claimant of the effect of the agreement. See *also* Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 147.4(d)(2) (Rule 147.4(d)(2)).

Conflicting evidence was presented on the disputed issues. The claimant's arguments concerning his confusion about the nature of the injury, ineffective assistance by the ombudsman, lack of consideration for the BDA, and financial pressure to sign the BDA were all presented at the CCH for the hearing officer's consideration. Whether good cause existed to relieve the claimant of the effect of the BDA was a fact question for the hearing officer to resolve as the finder of fact. There was evidence that both the ombudsman and the benefit review officer explained the BDA to the claimant before the claimant signed it. The hearing officer decided that the compensable injury of _____, does not extend to and include the lumbar spine and that good cause does not exist to relieve the claimant from the effects of the BDA signed on

November 12, 2002. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Based on the hearing officer's findings of fact, Conclusion of Law No. 2, and her decision on the disputed issues (compensable injury does not extend to and include the lumbar spine and good cause does not exist to relieve the claimant of the effects of the BDA), we believe that Conclusion of Law No. 3 contains a typographical error in that it leaves out the word "not" between the words "does" and "extend" and we hereby reform Conclusion of Law No. 3 to read as follows:

3. Because good cause does not exist to relieve Claimant from the effects of the agreement signed on November 12, 2002, the compensable injury of _____, does **not** extend to and include the lumbar spine.

As reformed herein, the hearing officer's decision and order are affirmed.

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

**WILLIAM S. MCINTYRE IV
12222 MERIT DRIVE, SUITE 1660
DALLAS, TEXAS 75215-3212.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge