

IN THE SUPREME COURT OF TEXAS

=====
No. 97-1005
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LUMBERMENS MUTUAL CASUALTY CO., PETITIONER

v.

STAN MANASCO, RESPONDENT

=====
ON PETITION FOR REVIEW FROM THE COURT
OF APPEALS FOR THE NINTH DISTRICT OF TEXAS
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Argued on March 31, 1998

JUSTICE SPECTOR filed a dissenting opinion.

The Court holds today that an injured worker who fails to appeal an impairment rating and a finding of maximum medical improvement may not re-open the issue by presenting evidence of “change of condition.” Although it is well settled that workers' compensation legislation is remedial and should be construed in favor of the worker, *Lujan v. Houston Gen. Ins. Co.*, 756 S.W.2d 295, 297 (Tex. 1988), the Court’s judgment comports with a narrow reading of Texas Labor Code Section 410.307. Because I would hold that an injured worker can re-open his claim based on evidence of “change of condition,” I dissent.

I also write to emphasize that the Worker’s Compensation Act that became law in 1989 is riddled with procedural pitfalls where a worker may unwittingly waive rights. In creating disincentives for attorneys to represent injured workers in the administrative process, the role of the Commission’s ombudsman has become crucial. Yet, the record here suggests that ombudsmen may not adequately “assist unrepresented claimants . . . to protect their rights in the workers’

compensation system” as they are charged with doing. TEX. LAB. CODE § 409.041(b)(4).

Manasco’s treating physician assigned him a thirty percent impairment rating. The Commission’s appointed doctor determined Manasco’s impairment rating was seven percent. The impairment rating was then found to be seven percent by the contested case hearing officer. Manasco testified the ombudsman discouraged an appeal, advising that it would not be “profitable.” This failure to appeal has now barred Manasco from receiving the benefits that may have been warranted as a result of his on-the-job injury.

Throughout the administrative process, an uninformed worker proceeds at his or her peril. For example, a worker must raise all issues in dispute at the benefit review conference because failure to address an issue may prevent the issue from ever being raised. TEX. LAB. CODE § 410.151(b). In addition, sections 410.169 and 410.205 of the Labor Code dictate that decisions of the contested case hearing and the administrative appeals panel are final in the absence of a timely appeal.

Injured workers must rely on ombudsmen if fewer attorneys are willing to take workers’ compensation cases under the current Workers’ Compensation Act. *See Texas Workers’ Compensation Comm’n v. Garcia*, 893 S.W.2d 504, 533 (Tex. 1995). Thus, it is imperative that the ombudsmen fully inform unrepresented claimants of the consequences of their decisions at each step in the administrative adjudication process.

Rose Spector
Justice

OPINION DELIVERED: June 23, 1998