IN THE SUPREME COURT OF TEXAS

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NO. 98-0479

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CONTINENTAL CASUALTY INSURANCE COMPANY, PETITIONER

v.

FUNCTIONAL RESTORATION ASSOCIATES, PRODUCTIVE REHABILITATION INSTITUTE OF DALLAS FOR ERGONOMICS, AND THE TEXAS WORKERS' COMPENSATION COMMISSION, RESPONDENTS

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS

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JUSTICE OWEN, joined by JUSTICE HECHT, dissenting.

Because the Texas Workers' Compensation Act provides for judicial review of medical benefits issues in section 410.255, I respectfully dissent.

I

James Hood sustained a job-related injury and received treatment from two medical service providers. Hood's employer's workers' compensation insurance carrier, Continental Casualty, refused to pay for these services, contending that they were not medically necessary. The health care providers pursued the matter with the Commission, and the Commission determined that Continental should pay. Continental requested a hearing by the State Office of Administrative Hearings, as it had the right to do under section 413.031(d) of the Labor Code. At the conclusion of that proceeding, Continental was ordered to pay for the medical services provided to Hood. Continental then attempted to appeal to a Travis County district court, but that appeal was dismissed for want of jurisdiction.

The Court concludes that the Workers' Compensation Act does not provide for judicial review of medical benefits disputes. The Court's construction of the Act is an unreasonable one. Section 410.255 provides for judicial review under a substantial evidence standard and was intended to be a significant change when enacted as part of the 1989 revamping of the Act. But as interpreted by the Court, it has never applied to any issues other than attorney's fees incurred in connection with a medical benefits dispute and disputes that may arise when two physicians disagree about the necessity of spinal surgery. Thus, the Court says that a party who loses a medical benefits dispute hearing may not seek judicial review of the merits of that decision, but that the amount of attorney's fees awarded in connection with that dispute is subject to judicial review. I find it implausible that the Legislature intended to elevate the issue of attorney's fees above a worker's or service provider's right to payment for medical benefits or that the Legislature intended for judicial review under section 410.255 to apply to so few issues.

II

Medical benefits disputes are covered by section 413.031 of the Labor Code.[1] When a

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[1]Section 413.031 provides in pertinent part:

§ 413.031. Medical Dispute Resolution

(a) A party, including a health care provider, is entitled to a review of a medical service provided or for which authorization of payment is sought if a health care provider is:

(1) denied payment or paid a reduced amount for the medical service rendered;

(2) denied authorization for the payment for the service requested or performed if authorization is required by the medical policies of the commission; or

(3) ordered by the division to refund a payment received for a medical service rendered.

* * *

(c) A review of a medical service under this section shall be provided by a

workers' compensation insurer denies payment, as Continental did in this case, the worker or the health care provider can request review by a "health care provider professional review organization." TEX. LAB. CODE § 413.031(c). If the dispute remains unresolved, a party is entitled to a hearing by the State Office of Administrative Hearings in the manner provided for contested case hearings under the Administrative Procedure and Texas Register Act. *See id.* § 413.031(d). The issue before the Court is whether there is a right to judicial review of administrative decisions that result from these hearings.

Section 410.255 appears in Chapter 410. Chapter 410 is entitled "Judicial Review—General Provisions." Section 410.255 expressly grants the right of judicial review for "all issues other than those covered under section 410.301(a)":

> **§ 410.255. Judicial Review of Issues Other Than Compensability or Income or Death Benefits**
>
> (a) For all issues other than those covered under Section 410.301(a), *judicial review shall be conducted* in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code [sections 171 et seq. of the Administrative Procedure Act].
>
> (b) Judicial review conducted under this section is governed by the substantial evidence rule.

Id. § 410.255 (emphasis added). Medical benefits issues are "issues other than those covered under Section 410.301(a)." Section 410.301(a) covers only matters that relate to compensability, eligibility

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> health care provider professional review organization if requested by the health care practitioner or if ordered by the commission.
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> (d) A party to a medical dispute that remains unresolved after a review of the medical service under this section is entitled to a hearing. The hearing shall be conducted by the State Office of Administrative Hearings within 90 days of receipt of a request for a hearing in the manner provided for a contested case under Chapter 2001, Government Code (the administrative procedure law).

TEX. LAB. CODE § 413.043.

for, or the amount of income or death benefits. *See id.* § 410.301(a).[2]

Section 410.255 expressly grants a right to judicial review because it provides that, for all issues other than those covered under section 410.301(a), judicial review "*shall be conducted . . . .*" The section then specifies the manner in which the required judicial review is to be conducted, which is in accordance with the Administrative Procedure Act (the APA). *See id.* § 410.255.

The Court does not accept the straightforward meaning of section 410.255. Instead, it reads into that section a limitation that it does not contain. The Court says that section 410.255 only applies when there has been a final decision from an appeals panel. Since virtually no medical benefits disputes are heard by an appeals panel under the Act, *see id.* § 413.043, the Court reasons that there is no right to judicial review.

As construed by the Court, the role of section 410.255 has been one of obscurity since the day it was enacted. If the Act means what the Court says it means, then the only issues to which section 410.255 has ever applied are differing medical opinions about whether spinal surgery is necessary, *see id.* § 408.026, and disputes over attorney's fees in connection with medical benefits, since those are the only two issues that proceed to an appeals panel and fall within section 410.255.

The Court's erroneous construction of section 410.255 flows from its misinterpretation of section 410.251 of the Act, which says:

> **§ 410.251 Exhaustion of Remedies**
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> A party that has exhausted its administrative remedies under this subtitle and that is aggrieved by a final decision of the appeals panel may seek judicial review under this subchapter and subchapter B, if applicable.

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[2]Section 410.301(a) is contained in subchapter G of the Act entitled "Judicial Review of Issues Regarding Compensability or Income or Death Benefits" and provides: "Judicial review of a final decision of a commission appeals panel regarding compensability or eligibility for or the amount of income or death benefits shall be conducted as provided by this subchapter." TEX. LAB. CODE § 410.301(a).

Id. § 410.251. The Court views this section as the exclusive grant of judicial review of issues other than those arising under section 410.310(a). That erroneous premise then leads the Court to conclude that unless there has been a decision by an appeals panel, there is no right to judicial review.

But section 410.251 does not purport to be an exclusive grant of the right to judicial review. It says only that a party who has exhausted administrative remedies and is aggrieved by a final decision of the appeals panel *may* seek judicial review under subchapter F and subchapter G if G applies. Section 410.251 does not say that judicial review is foreclosed under all other circumstances.

It is apparent that section 410.255 was meant to be a separate grant of a right to judicial review distinct from 410.251 because section 410.255 differs from section 410.251 in two important ways. First, section 410.255 does not provide that judicial review may be sought under subchapter G of the Act, as does section 410.251. Section 410.255 recognizes that the issues that it covers are to be treated differently from those covered by subchapter G. The second difference between 410.251 and 410.255 is that section 410.255 explicitly recognizes that the standard of review for the issues it covers is different from the standard of review of issues covered in subchapter G under section 410.301(a). The standard of review under section 410.255 is the substantial evidence rule. The standard of review under subchapter G, which includes section 410.301(a), is a very different standard.

The Court has also drawn unwarranted conclusions from section 413.031's failure to include a specific reference to "judicial review." The Court reasons that if the Legislature intended for there to be judicial review, then it would have said so in section 413.031. But if section 413.031 *were* to contain a provision regarding judicial review, it would needlessly duplicate the provision for review in section 410.255.

The Court's reliance on sections 415.034 and 415.035 of the Labor Code as examples of how the Legislature provides for judicial review when it intends to do so is inapposite. Section 415.034 provides for a hearing when violations of the Act are charged, and section 415.035 provides for judicial review in those matters. *See id.* §§ 415.034, 415.035. Neither the general provisions for judicial review in Chapter 410 nor the specific provisions in section 410.255 apply to disputes about alleged violations of the Act. Chapter 410 applies only to proceedings to determine the liability of a carrier for compensation for injury or death. *See id.* §§ 410.002; 410.255. Accordingly, it was necessary to include a separate provision for judicial review when alleged violations of the Act are at issue under Chapter 415.

It is also of no moment that the words used in section 415.035 to provide for judicial review are not identical to those used in section 410.255. Although different words are used, both Code provisions make it clear that there is a right of judicial review.

III

The Court's construction of section 410.255 cannot be squared with the legislative history of the Act. Why was there an extended debate in the Texas Legislature about substantial evidence review and why did the Legislature take pains to say in section 410.255 and its predecessor, article 8308-6.64, that "[j]udicial review conducted under this section is governed by the substantial evidence rule" if the only issues to which the substantial evidence rule could ever apply were attorney's fees and differing medical opinions about the necessity of spinal surgery? The question of what standard of judicial review should apply was a much-debated, controversial issue when the Legislature was promulgating the Act. The Legislature unquestionably intended for there to be a dichotomy between the standard of review applied to medical benefits issues and the standard of review to be applied to issues regarding compensability, eligibility, and the amount of income or death benefits. The Court's decision eliminates the significance of that dichotomy.

Interpreting the Act as providing for judicial review of medical benefit disputes is consistent with the writings of Senator Montford, the principal sponsor of the Workers' Compensation Act. He wrote in his guide to the Act that it created two distinct tracks for review, one for medical benefits disputes and another for other benefits disputes:

> In Chapter F of Article 6 are provisions changing the judicial review step of the prior comp law . . . to (1) a *non*-"de novo" and *non*-APTRA trial by jury (or judge) with respect to issues regarding compensability, income benefits, and/or death benefits, and (2) for all other comp issues/disputes (that is, all *not* included in the foregoing category (1), such as a medical benefits dispute/issue), an APTRA Section 19 judicial review tried . . . without a jury.

1 JOHN T. MONTFORD ET AL., A GUIDE TO TEXAS WORKERS' COMP REFORM, § 6F.0(a) (1991). This same publication deals more extensively with judicial review in succeeding sections, and repeats at other junctures that former section 6.64(a), recodified as section 410.255, made judicial review "mandatory" for "a medical benefits dispute/issue." *Id*. at § 6F.64. Additional references to the availability of judicial review for medical benefits decisions appear throughout Senator Montford's workers' comp guide.

I generally am loathe to refer to secondary materials in construing a statute, even when those materials were authored by the primary sponsor of the legislation at issue. *See C & H Nationwide, Inc. v. Thompson*, 903 S.W.2d 315, 329 (Tex. 1994) (Hecht, J., concurring and dissenting) (citing *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974); *National Woodwork Mfrs. Ass'n v. NLRB*, 386 U.S. 612, 639 n.34 (1967); *American Fed'n of Gov't Employees Locals 225, 1504 & 3723 v. Federal Labor Relations Auth.*, 712 F.2d 640, 647 n.29 (D.C. Cir. 1983)). But in some instances, secondary materials authored by a legislator so clearly reflect the generally accepted, fundamental meaning of a statute that a court should be guided by that interpretation and should not construe the statute in a highly technical and unreasonable manner. This is one of those instances. It seems extremely unlikely that Senator Montford would write as extensively and as matter-of-factly as he has done about judicial review of medical benefits decisions if there were any question about

the matter. It seems equally unlikely that Senator Montford's view of something as basic as judicial review under the Act, which was debated so extensively by the Legislature, could be as far off the mark as the Court concludes.

Senator Montford's explanation of judicial review of medical benefits issues is entirely consistent with the wording of section 410.255. No one questioned Senator Monford's view before or after he wrote the workers' comp guide. There is no indication that when the non-substantive recodification of the Act occurred in 1993,[3] Senator Montford or any other member of the Legislature thought that judicial review of medical benefits decisions was unavailable. As the Court explains, even the Commission thought that judicial review of medical benefit disputes was available until it argued to the contrary in this litigation. *See* ___ S.W.3d __.

Senator Montford's guide also discusses the fact that former article 8308-6.64, which is now section 410.255 of the Labor Code, refers to sections of the Administrative Procedure Act that

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[3]The 1993 revisions reflect that they were intended to be non-substantive:

> § 1.001. Purpose of Code
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> (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.
>
> (b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable, by:
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> (1) rearranging the statutes into a more logical order;
> (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
> (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
> (4) restating the law in modern American English to the greatest extent possible.

TEX. LABOR CODE § 1.001(a).

include section 2001.171. *See* MONTFORD, *supra*, § 6F.64(b). As Senator Montford explains, section 2001.171 in turn provides that, "[a] person who has exhausted all administrative remedies available within a state agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter." TEX. GOV. CODE § 2001.171. The petitioner in this case has exhausted all administrative remedies available within a state agency. Those remedies did not include review by an appeals panel, but that is not required by section 410.255 of the Labor Code or section 2001.171 of the APA as a prerequisite to judicial review.

The Court's response to Senator Montford's writings about the Act is unpersuasive. The Court first says that "Senator Montford's book deals with the precodification version of the Act rather than the current version." __ S.W.3d at __. As noted above, the current version is a non-substantive codification of the law about which Senator Montford wrote. The Court next discusses early *drafts* of the Act. *See* __ S.W.3d at __. But Senator Montford's writings are not addressed to drafts. He wrote in 1991 about the Act as passed by the Legislature in 1989.

Finally, the Court says that "further revisions during codification then expressly tied section 410.251 to both sections 410.255 and 410.301, requiring appeals panel review for both." __ S.W.3d at __. Again, the revisions were intended to be and were, in fact, non-substantive. *Cf. Fleming Foods of Texas, Inc. v. Rylander*, __ S.W.3d __ (Tex. 1999). But more importantly, changes made when the Act was codified, non-substantive or otherwise, did not "tie" section 410.255 to an appeals panel decision. There is no mention in section 410.255 of an appeals panel decision. Nor is there any "tying," express or otherwise, between section 410.251 (the exhaustion of remedies section that includes a reference to an appeals panel review) and sections 410.255 and 410.301. Just the opposite is true.

Notably, section 410.301(a) expressly refers to an appeals panel decision while section 410.255 does not. *Compare* TEX. LAB. CODE § 410.301(a) ("Judicial review *of a final decision of a commission appeals panel* regarding compensability or eligibility for or the amount of income or

death benefits shall be conducted as provided by this subchapter." (emphasis added)) *with id.* § 410.255 ("For all issues other than those covered under Section 410.301(a), judicial review shall be conducted in the manner provided for judicial review of a contested case under Subchapter G.") *This difference is a recognition in the Code provisions themselves that an appeals panel decision is not a prerequisite for judicial review of issues covered by section 410.255.* Moreover, why was a reference to an appeals panel necessary in section 410.301(a) if, as the Court says, section 410.251 already required a decision from an appeals panel before there could be judicial review under either section 410.255 or section 410.031? The Court does not or cannot say.

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The Court recognizes that section 410.255 appears, on its face, to grant a right to judicial review. But the Court declines to give the section that effect. Accordingly, I respectfully dissent. I would hold that the district court had jurisdiction of the appeals by the providers of medical benefits.

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Priscilla R. Owen
Justice

OPINION DELIVERED: April 6, 2000