

IN THE SUPREME COURT OF TEXAS

No. 98-1046

NATIONAL LIABILITY AND FIRE INSURANCE COMPANY, PETITIONER

v.

DONALD ALLEN, RESPONDENT

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

Argued on September 22, 1999

JUSTICE BAKER delivered the opinion of the Court in which CHIEF JUSTICE PHILLIPS, JUSTICE ENOCH, JUSTICE ABBOTT, JUSTICE HANKINSON, JUSTICE O'NEILL and JUSTICE GONZALES joined.

JUSTICE OWEN filed a dissenting opinion, in which JUSTICE HECHT joined.

We overrule National Liability's motion for rehearing. We withdraw our opinion of February 3, 2000 and substitute the following in its place.

This workers' compensation case presents three issues: (1) whether section 410.253 of the Texas Labor Code's simultaneous-filing requirement is mandatory and jurisdictional; (2) whether Rule 5 of the Texas Rules of Civil Procedure, commonly known as the "mailbox rule," applies to section 410.253 filings; and (3) whether facts and evidence in a Workers' Compensation Commission hearing record must comply with the Texas Rules of Evidence to be admissible at trial

in a modified de novo judicial review of a Commission decision. Our decision in *Albertson's, Inc. v. Sinclair*, 984 S.W.2d 958 (Tex. 1999), controls the answer to issues one and two. Thus, we hold that section 410.253's simultaneous-filing requirement is mandatory but not jurisdictional and that the mailbox rule applies to section 410.253 filings. We conclude that, under section 410.306(b) of the Texas Labor Code, facts and evidence in the Commission record must comply with the Texas Rules of Evidence to be admissible at trial. Accordingly, we affirm the court of appeals' judgment.

I. BACKGROUND

Donald Allen suffered a work-related back injury. Allen's employer's carrier, National Liability and Fire Insurance Company, contested Allen's claim for workers' compensation benefits. At the contested case hearing, Allen and National Liability disputed whether Allen timely notified his employer that his injury was work-related. Allen testified that, while he was in the hospital recovering from back surgery, he told his superintendent, Tom Angers, that his injury was work-related. Angers testified that he did not recall Allen telling him that the injury was work-related. The hearing examiner found that Allen did not timely notify his employer that his injury was work-related, and therefore the injury was not compensable. The Commission Appeals Panel affirmed the hearing examiner's conclusion. Allen sought judicial review of that decision in district court.

Allen filed his judicial review petition in the district court on June 7, 1993. The Commission received a copy of the petition on June 14, 1993. The only issue at trial was whether Allen had timely notified his employer that his injury was work-related. Allen again testified that shortly after surgery he had told Angers that his injury was work-related. National did not call Angers as a witness. Instead, it attempted to introduce Angers' former testimony from the Commission hearing.

Allen objected on hearsay grounds. The trial court refused to admit Angers' Commission testimony on the ground that it was hearsay and that National did not show that Angers was unavailable to testify. The jury found that Allen had timely notified his employer. The trial court rendered a judgment vacating the Commission's decision.

National appealed, asserting that: (1) Allen failed to prove that he timely filed a copy of his petition for judicial review with the Commission, and therefore the district court lacked jurisdiction to entertain Allen's suit; and that (2) the trial court erred in excluding Angers' Commission testimony. The Commission joined National on the first point of error. The court of appeals held that simultaneously filing a petition for judicial review with the Commission and the district court is mandatory and jurisdictional, but that, under the mailbox rule, Allen had timely filed his petition with the Commission. The court of appeals also held that Angers' Commission testimony was hearsay at trial and was therefore inadmissible without a showing of Angers' unavailability under Rule 804(b)(1). *See* TEX. R. EVID. 804(b)(1).

National filed a petition for review with this Court asserting that: (1) because Allen failed to timely file a copy of his petition for judicial review with the Commission, the trial court lacked jurisdiction over Allen's judicial review action; and that (2) Angers' Commission testimony was admissible at trial as part of the Commission record. The Commission also filed a petition for review asserting that: (1) a party seeking judicial review must prove compliance with section 410.253 once another party alleges that the petition for judicial review was not timely filed with the Commission; and that (2) the failure to prove timely filing should bar the party from seeking judicial review of a Commission Appeals Panel decision.

II. STATUTORY CONSTRUCTION

In construing a statute, our objective is to determine and give effect to the Legislature's intent. *See Albertson's*, 984 S.W.2d at 960; *Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex. 1998). We first look at the statute's plain and common meaning. *See Fitzgerald v. Advanced Spine Fixation*, 996 S.W.2d 864, 865 (Tex. 1999); *Albertson's*, 984 S.W.2d at 960. We presume that the Legislature intended the plain meaning of its words. *See Fleming Foods v. Rylander*, 6 S.W.3d 278, 282 (Tex. 1999). If possible, we must ascertain the Legislature's intent from the language it used in the statute and not look to extraneous matters for an intent the statute does not state. *See Seay v. Hall*, 677 S.W.2d 19, 25 (Tex. 1984).

III. TEXAS LABOR CODE SECTION 410.253

We recently construed section 410.253 and held that it required filing a petition for judicial review with the trial court and the Commission on the same day. *See Albertson's*, 984 S.W.2d at 961; *see also Benavidez v. Travelers Indem. Co.*, 985 S.W.2d 458, 458 (Tex. 1999). We also held that section 410.253's same-day filing requirement was mandatory but not jurisdictional. *See Albertson's*, 984 S.W.2d at 961; *see also Benavidez*, 985 S.W.2d at 458. Finally, we held that the mailbox rule applies to section 410.253 filings. *See Albertson's*, 984 S.W.2d at 962. Both National and the Commission recognize that *Albertson's* and *Benavidez* supersede their section 410.253 arguments. Nevertheless, National and the Commission ask this Court to revisit its holdings in those cases. We respectfully decline to do so. Accordingly, we agree with the court of appeals' conclusion that compliance with section 410.253 is mandatory and that the mailbox rule applies to section 410.253 filings. However, we disapprove of the court of appeals' conclusion that section

410.253's same-day filing requirement is jurisdictional.

IV. TEXAS LABOR CODE SECTION 410.306

A. APPLICABLE LAW

Whether to admit or exclude evidence is within the trial court's sound discretion. *See Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998). On appeal, we review a trial court's evidentiary decisions by an abuse of discretion standard. *See Jackson v. Van Winkle*, 660 S.W.2d 807, 809-10 (Tex. 1983).

The Labor Code provides for a modified de novo review of Commission Appeals Panel decisions on issues of "compensability or eligibility for or the amount of income or death benefits." *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 253 (Tex. 1999); TEX. LAB. CODE §§ 410.301-.308. In such judicial review actions, the Labor Code requires the trial court to inform the jury of the Appeals Panel decision on each disputed issue submitted to the jury or, if a nonjury trial, the Code requires the trial court to consider the Appeals Panel decision. *See* TEX. LAB. CODE § 410.304(a), (b). The Labor Code also provides:

(a) evidence shall be adduced as in other civil trials.

(b) the Commission on payment of a reasonable fee, shall make available to the parties a certified copy of the Commission's record. All facts and evidence the record contains are admissible to the extent allowed under the Texas Rules of Civil Evidence.

TEX. LAB. CODE § 410.306(a), (b).

This Court has not previously interpreted section 410.306(b). Two other published opinions have construed this section of the Labor Code. *See St. Paul Fire & Marine Ins. Co. v. Confer*, 956 S.W.2d 825 (Tex. App.--San Antonio 1997, writ denied); *ESIS, Inc., Servicing Contractor v.*

Johnson, 908 S.W.2d 554 (Tex. App.--Fort Worth 1995, writ denied). Both of these cases hold that parts of the Commission record are admissible only if they comply with the Texas Rules of Evidence when offered at trial. *See Confer*, 956 S.W.2d at 831 (holding that testimony from a Commission contested-case hearing was not admissible at trial because the witness's unavailability under Rule 804(b)(1) was not shown); *ESIS*, 908 S.W.2d at 561 (holding that a Commission Appeals Panel decision was not admissible at trial because it was not properly authenticated under the evidence rules).

B. ANALYSIS

Here, the court of appeals held that section 410.306(b) requires evidence in the Commission record to comply with the Texas Rules of Evidence when offered at trial. Accordingly, the court concluded that the trial court did not abuse its discretion in excluding Angers' Commission testimony because, under the Texas Rules of Evidence, the testimony was hearsay when offered in the trial court and National failed to prove that Angers was unavailable to testify. *See* TEX. R. EVID. 804(b)(1).

National contends that the court of appeals' construction of section 410.306 would make almost all testimony before the Commission hearsay when offered later in the trial court. National advocates an alternative construction of section 410.306(b) that would allow parts of the Commission record to be admissible as long as they are relevant, properly authenticated, and do not contain hearsay within hearsay.

National relies on *ESIS* to support its argument, emphasizing the following language: “[a]s part of the [C]ommission record, [the appeals’ panel opinion] is admissible under the Act.” *ESIS*,

908 S.W.2d at 560. But National misplaces its reliance on *ESIS*. *ESIS* does not conflict with the court of appeals' construction of section 410.306(b) here.

In *ESIS*, the court of appeals considered whether the trial court abused its discretion by admitting into evidence a copy of the Commission Appeals Panel opinion, which was not certified or authenticated under the Texas Rules of Evidence. *See ESIS*, 908 S.W.2d at 560-61. Relying on section 410.306(b), the *ESIS* court held that, to be admissible under section 410.306(b), the opinion had to comply with the Texas Rules of Evidence when proffered at trial. *See ESIS*, 908 S.W.2d at 560. Because the copy of the Appeals Panel opinion had not been properly certified or authenticated under the evidence rules, the court of appeals concluded that the trial court abused its discretion by admitting it into evidence. *See ESIS*, 908 S.W.2d at 560. In doing so, the court applied the Rules of Evidence on authentication of public records. *See ESIS*, 908 S.W.2d at 561; TEX. R. EVID. 902, 1005. But the *ESIS* court did not hold that the other evidentiary rules do not apply to the Commission record or parts of it when offered at trial.

Section 410.306(b)'s plain language does not limit the Texas Rules of Evidence's application to relevancy, authentication, and hearsay within hearsay concerns. *See TEX. LAB. CODE* § 410.306(b). It contemplates that *all* of the Texas Rules of Evidence apply to facts and evidence contained in the Commission record when offered at trial. *See TEX. LAB. CODE* § 410.306(b).

In *Confer*, the court of appeals considered the exact issue we consider here -- whether testimony from a Commission hearing is admissible in a judicial review action. *See Confer*, 956 S.W.2d at 830-31. In *Confer*, the trial court excluded the Commission testimony because the party proffering the testimony did not show that the witness was unavailable to testify at trial. The court

of appeals held that the trial court did not abuse its discretion in excluding the evidence. *See Confer*, 956 S.W.2d at 831.

We agree with the *Confer* court and the court of appeals in this case that section 410.306(b) requires testimony in the Commission record to comply with the Texas Rules of Evidence to be admissible in trial. *See Confer*, 956 S.W.2d at 831. Accordingly, we conclude that the court of appeals correctly determined that the trial court did not abuse its discretion when it refused to admit Angers' testimony over Allen's hearsay objection.

V. THE DISSENT

The dissent would hold that section 410.306(b) does not require that evidence be admissible under the evidentiary rules when offered at trial, but only that the evidence was admissible when initially offered during Commission proceedings. The dissent first reasons that our construction of section 410.306(b) renders section 410.306(b) superfluous. We disagree. While section 410.306(a) provides generally that evidence shall be adduced as in other civil trials, section 410.306(b) specifies that evidence from the Commission record is admissible only to the extent allowed under the evidentiary rules. *See* TEX. LAB. CODE § 410.306(a), (b).

The dissent also complains that our construction of section 410.306(b) flouts the legislative intent of streamlining workers' compensation proceedings and results in more expense for workers. But it is the dissent's view of the statute that would require workers to spend more time and money in resolving disputes. Making testimony in the Commission record admissible at trial just because it was admissible when offered at the Commission would force workers to hire attorneys to represent them in Commission proceedings. Workers would need attorneys to effectively cross-examine

witnesses and object to inadmissible evidence at Commission proceedings to protect the record. This result would be especially ironic because the Labor Code specifies that the evidentiary rules do not apply to Commission proceedings. *See* TEX. LAB. CODE § 410.165. Therefore, the dissent's view would make Commission proceedings more formal and costly than the Legislature intended. Finally, the dissent's interpretation would lead to the anomalous and cumbersome result of trial courts having to retroactively apply the evidentiary rules to evidence offered at the Commission to determine whether that evidence is admissible at trial.

VI. CONCLUSION

We conclude here, as we did in *Albertson's*, that section 410.253's requirement of simultaneous filing of a petition for judicial review with the trial court and the Commission is mandatory but not jurisdictional and that the mailbox rule applies to section 410.253 filings. We also conclude that the facts and evidence in the Commission record are admissible at trial only to the extent they are admissible under the Texas Rules of Evidence. Accordingly, we affirm the court of appeals' judgment.

James A. Baker, Justice

OPINION DELIVERED: May 4, 2000

