

Conditionally granted and Opinion Filed December 19, 2017



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00638-CV

IN RE ZURICH AMERICAN INSURANCE COMPANY, Relator

Original Proceeding from the 134th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-14-08201

MEMORANDUM OPINION

Before Justices Francis, Brown, and Whitehill
Opinion by Justice Francis

In this original proceeding, relator complains of the trial court's order denying relator's plea to the jurisdiction. The underlying dispute involves a claim for workers' compensation benefits. Relator Zurich American Insurance Company maintains that the trial court lacked jurisdiction over the issues of maximum medical improvement and impairment rating because the real party in interest, Rhondolyn Mack, did not raise those issues in her appeal to the workers' compensation division appeals panel. The Court requested a response from Mack but no response has been filed. We conditionally grant the writ of mandamus.

Background

Mack sought workers' compensation benefits following an on-the-job injury. Mack and Zurich attended a Contested Case Hearing with the Texas Department of Insurance Division of Workers' Compensation. The hearing officer considered and ruled on three issues —the extent of Mack's injury, whether Mack had reached maximum medical improvement and, if so, on what

date, and Mack's correct impairment rating if she had reached maximum medical improvement. The hearing officer determined that the compensable injury did not extend to and include certain additional injuries alleged by Mack, concluded that Mack's date of maximum medical improvement is June 4, 2013, and set her impairment rating at 2%. Mack appealed to the Division's appeals panel. Although the date of maximum medical improvement and impairment rating were issues the hearing officer decided, Mack appealed only finding of fact number three and conclusion of law number three, which encompassed only the hearing officer's decision on extent of injury. The appeals panel allowed the hearing officer's decision to become final. Mack then requested judicial review solely on the issue of extent of injury. More than two years later, Mack amended her petition and added the issues of maximum medical improvement and impairment rating.

Zurich filed a plea to the jurisdiction and, alternatively, motion for partial summary judgment, arguing that the trial court lacked jurisdiction over the issues of maximum medical improvement and impairment rating. Zurich based its plea on section 410.302(b) of the labor code, which states "[a] trial under this subchapter is limited to issues decided by the appeals panel and on which judicial review is sought." TEX. LABOR CODE § 410.302(b). Zurich argued that, by failing to appeal the issues of maximum medical improvement and impairment rating, Mack failed to exhaust administrative remedies for those issues and the trial court lacked jurisdiction to address those issues. In a March 22, 2017 order, the trial court denied the plea to the jurisdiction and the alternative motion for summary judgment. Zurich now seeks a writ of mandamus directing the trial court to vacate the order denying the plea and to issue a written order granting the plea to the jurisdiction and dismissing the issues of maximum medical improvement and impairment rating.

Availability of Mandamus Relief

To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). The denial of a plea to the jurisdiction where a claimant has failed to exhaust its administrative remedies is a proper ground for the issuance of a writ of mandamus. *In re Liberty Mut. Fire Ins. Co.*, 295 S.W.3d 327, 328 (Tex. 2009) (orig. proceeding).

Applicable Law

The Workers' Compensation Act vests the Workers' Compensation Commission with exclusive jurisdiction to determine a claimant's entitlement to benefits. *See Am. Motorists Ins. Co. v. Fodge*, 63 S.W.3d 801, 803 (Tex. 2001). When an agency has exclusive jurisdiction, a party must exhaust all administrative remedies before seeking judicial review of the agency's action. *Subaru of Am., Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 221 (Tex. 2002). The exhaustion requirement ensures that the administrative agency has the opportunity to resolve disputed fact issues within its exclusive jurisdiction before a court addresses those issues. *Stinson v. Ins. Co. of the State of Pa.*, 286 S.W.3d 77, 84 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) (op. on rehearing). (citing *Essenburg v. Dallas Cty*, 988 S.W.2d 188, 189 (Tex. 1998) (per curiam)).

The workers' compensation scheme involves a four-tiered administrative process: a benefit review conference (BRC), a contested case hearing (CCH), review by an administrative appeals panel, and judicial review. *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 437 (Tex. 2012); TEX. LABOR CODE §§ 410.021, 410.151, 410.202. The hearing officer's findings are binding if not appealed. TEX. LABOR CODE § 410.169. Failure to raise an issue before the appeals panel that the hearing officer decided results in a failure to exhaust administrative

remedies with regard to those issues and prohibits judicial review of those issues. TEX. LABOR CODE § 410.302(b); *St. Paul Ins. Co. v. Mefford*, 994 S.W.2d 715, 719 (Tex. App.—Dallas 1999, pet. denied) (“When a party seeks judicial review of a decision of the commission appeals panel, the only issues before the trial court are those decided by the commission appeals panel.”) (citing TEX. LABOR CODE ANN. §§ 410.251, 410.302); *Krueger v. Atascosa County*, 155 S.W.3d 614, 619 (Tex. App.—San Antonio 2004, no pet.) (“The language of § 410.302 must be given its plain meaning, which is that judicial review is limited to issues “decided by” the TWCC Appeals Panel.”). Even when an injured worker has exhausted her administrative remedies with regard to one specific issue, dismissal for lack of jurisdiction may be warranted with regard to other issues where the administrative remedies were not exhausted. *Pickett v. Texas Mut. Ins. Co.*, 239 S.W.3d 826, 830, 841–42 (Tex. App.—Austin 2007, no pet.) (affirming dismissal of claims for want of jurisdiction for failure to exhaust their administrative remedies and affirming take-nothing summary judgment on claims arising from three medical disputes for which the administrative remedies had been exhausted).

Discussion

Here, Mack failed to seek review from the appeals panel of the issues of maximum medical improvement and impairment rating. She is, therefore, prohibited as a matter of law from pursuing review of those issues in the district court, and the trial court lacks jurisdiction over those issues. The trial court abused its discretion by denying Zurich’s plea to the jurisdiction.

Accordingly, we conditionally grant the writ and direct the trial court to issue written rulings vacating the March 22, 2017 order denying Zurich’s plea to the jurisdiction and alternative motion for summary judgment, granting Zurich’s plea to the jurisdiction, and dismissing Mack’s appeal of the issues of maximum medical improvement and impairment

rating. We order the trial court to make the written rulings ordered herein within fifteen (15) days of the date of this opinion. A writ will issue only if the trial court fails to comply with this opinion and the order of this date.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

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