

ADVISORY NO. 93

TOPIC: TWCC v. GARCIA

After seventeen months of deliberation, the San Antonio Court of Appeals has affirmed the case of TWCC v. Garcia, ruling that the 1989 Reform Act is unconstitutional.

The decision was handed down in 171 pages of majority, concurring and dissenting opinions. It was a 4-3 decision.

The court ruled that a pure impairment based system "is not an adequate or reasonable substitute for workers' common law negligence actions. It is arbitrary and unreasonable to limit the recovery of seriously injured workers in an experiment to lower compensation rates." For this reason, the court found that the impairment income benefits portion of the Act violated the open courts and due course of law provisions.

Secondly, the court found three parts of the Act to violate the equal protection clause, the right to trial by jury clause, and the open courts provision of the Texas Constitution. Those portions of the Act found to be unconstitutional on these grounds were (1) AMA guides compensation of some injuries and not others (no chronic pain); (2) the 15% threshold for supplemental income benefits; and (3) statutory MMI at 104 weeks.

Third, the Act provides for a modified de novo jury trial of benefit compensability issues, and for a substantial evidence review of all other issues (APTRA related proceedings). The court concluded this was an "unconstitutional hybrid system of review." There is some suggestion in the opinion that the court confused the applicability of the substantial evidence standard.

Fourth, the court held that the statute established a system which arbitrarily discourages attorney representation to plaintiffs, and that this violates the due course of law provision of the Constitution.

Three sections of the Act to which the plaintiffs directed complaints were found to be constitutional. The San Antonio court expressly affirmed the constitutionality of the average weekly wage, employer reimbursement, and designated doctor provisions of the Act.

Because the unconstitutional parts were so interrelated, the court refused to presume that the Legislature would have passed the one without the other. Accordingly, the entire Act was ruled unconstitutional and the severability clause will not be invoked.

In evaluating this opinion, it should be remembered that this result was anticipated. It was not expected to take seventeen months and 171 pages. The 4-3 vote indicates a surprisingly close division of the court.

At the time the case was originally tried, the plaintiffs dropped their claims for injunctive relief. This prevented the defendants from appealing the decision direct to the Supreme Court and required that it first be heard in the San Antonio Court of Appeals. Part of the trial strategy was to invoke the jurisdiction of this court as it has always been suspected to be an advantageous venue.

Thus, we have always anticipated the battle to be in the Supreme Court, to which the TWCC and associated defendants will be appealing this verdict of the Court of Appeals. The notice of appeal filed by the state to supersede the judgment of the trial court will remain in effect. The Texas Workers' Compensation Commission will continue to administer the 1989 Act until this case is finally adjudicated by the Supreme Court. We would anticipate that to occur in a timeframe of one to three years.