APPEAL NO. 990044

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 17, 1998. Addressing the sole disputed issue, he determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving a change of treating doctors to Dr. B. The appellant (self-insured) appeals this determination, contending that it was not reasonable and necessary for the respondent (claimant) to obtain medical care from Dr. B, whose office was over 100 miles from the claimant's residence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

The claimant had cancer, which resulted in an amputation of the right leg and hip dysarticulation. Dr. B, an orthopedic oncologist, treated her for this condition. On _____, the claimant sustained a compensable injury, which included the low back and right hip, in a fall. She was first treated for the compensable injury by Dr. BE, a family practitioner. In a letter of September 9, 1997, to the self-insured, Dr. BE referenced "a tremendous amount of miscommunication or non-communication about this injury and her preexisting disease" and his "frustration about her not receiving medical treatment for these problems." He apparently sought to refer her to a pain clinic to evaluate pain from the compensable injury and "phantom pain" from the amputation. He suggested that Dr. W become her "primary physician." According to the claimant, Dr. W was a pain management doctor, but he too had difficulty obtaining authorization for his prescribed treatment. In a letter of September 8, 1997, Dr. W wrote that he intended only to treat her headaches, which was the only condition he considered compensable. The claimant said that she then went to see Dr. B because the other two doctors were "confused with the phantom pain."

In a note of December 17, 1997, Dr. B wrote that the claimant returned to him "apparently not receiving any treatment in East Texas for her injury." He believed the fall aggravated her preexisting problems "status post hemi-pelvectomy." He further stated that the claimant was seen by Dr. W, but did not believe his treatment would be of much benefit. Because the claimant was not getting the care he believed she needed and because "there is no one in East Texas who is trained in tumors or reconstructive surgery, I don't think there is anyone in the area that can do what I do." Dr. B offered to take over her medical care. On January 5, 1998, Dr. B again noted the claimant's preexisting problems, that she "has not consumed a lot of active care," and offered to be "more aggressive trying to evaluate and treat this problem." On August 17, 1998, the claimant submitted an Employee's Request to Change Treating Doctors (TWCC-53) from Dr. W to Dr. B. She attached Dr. B's two notes to the application and added as the reason for the requested change that Dr. BE and Dr. W "have been unable to distinguish between the past and present injury. [Dr. B] is familiar w/past and present injuries and has been able to treat [me]." On August 19, 1998, the Commission approved the request for the reason that "this

type of specialist is not in clmts area and we feel this is necessary doctor change." The claimant testified at the CCH that she searched in East Texas for an orthopedic oncologist, but was unable to find one.

Section 408.022, as implemented in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(e) (Rule 126.9(e)), establishes criteria for approving a request to change treating doctors. These include, but are not limited to, considerations of whether the care currently being received is appropriate for reaching maximum medical improvement, the professional reputation of the doctor, and whether a conflict exists between the claimant and the doctor "to the extent that the doctor-patient relationship is jeopardized or impaired." Section 408.022(c)(4). The Appeals Panel has stated that the hearing officer must apply an abuse of discretion standard in the review of decisions approving or disapproving a request to change treating doctors. *See* Texas Workers' Compensation Commission Appeal No. 950232, decided April 4, 1995, and cases cited therein. That is, the hearing officer must look to see whether the Commission acted without reference to the "guiding rules and principles." Texas Workers' Compensation Commission Appeal No. 961187, decided July 31, 1996. We have also observed that the decision to approve a requested change should be based on the reasons given in the TWCC-53 at the time it was submitted. Texas Workers' Compensation Commission Appeal No. 950232, *supra*. In Texas Workers' Compensation Commission Appeal No. 961336, decided August 26, 1996, we further observed that seeking "better treatment" or claiming a failure to improve may be a proper basis for changing treating doctors.

In the case we now consider, the hearing officer made findings of fact that the claimant had a "long standing and highly satisfactory doctor/patient relationship" with Dr. B (Finding of Fact No. 5) and that Dr. B "was familiar with the Claimant's medical condition and treatment needs." Finding of Fact No. 6. He further commented that the claimant had numerous preexisting conditions, which, presumably, complicated the treatment of the compensable injury. From our review of the record in this case, including the comments of the self-insured's attorney at the CCH and on appeal, the self-insured appears to object to the approval of a change of treating doctors to Dr. B primarily because of the distance from the claimant's residence to Dr. B's office which would require the self-insured to pay travel expenses. *See* Rule 134.6 which addresses reasonably necessary travel expenses to obtain appropriate and necessary medical care.

Our decision in Texas Workers' Compensation Commission Appeal No. 951928, decided December 27, 1995, pointed out that a carrier may appropriately raise the distance question in opposing a request to change treating doctors and, if it does so, the approving official should consider the availability of alternatives to the requested treating doctor closer to the claimant's residence. It also recognized the "somewhat conflicting considerations" in the 1989 Act between an injured worker's "right to full and complete medical care" and to the worker's own choice of a treating doctor in whom the worker has confidence and the cost considerations involved in travel expense reimbursement. It nonetheless concluded that travel costs were but one more consideration, along with the other statutory criteria, for

judging whether an abuse of discretion has occurred in either approving or disapproving a requested change.

In the case we now consider, the hearing officer was advised that the distance from the claimant's residence to Dr. B's office exceeded 100 miles one way. He considered this distance and found it not controlling on the issue of a change of treating doctors. In addition, there was unrebutted evidence of the claimant's complicated medical history and evidence of her lack of progress with her prior treating doctors, her desire for the services of an orthopedic oncologist, and the unavailability of this specialty in "East Texas." The factors were properly considered by the hearing officer on the disputed issue, *see* Appeal No. 961336, *supra*, and we cannot conclude that there was an abuse of discretion in approving the change of treating doctors.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

_____
Alan C. Ernst
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Tommy W. Lueders
Appeals Judge