

APPEAL NO. 990108

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 22, 1998, a contested case hearing (CCH) was held. With regard to the four issues reported from the benefit review conference, the hearing officer determined that: (1) the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving a change of treating doctor to Dr. A; (2) appellant (carrier) "is not relieved of liability for treatment provided at the direction of [Dr. A]"; (3) carrier timely contested respondent's (claimant) change of treating doctors to Dr. A; and (4) claimant had disability from June 19, 1998 (all dates are 1998 unless otherwise stated), continuing through the date of the CCH. The hearing officer's finding of a timely contest of the change of treating doctors has not been appealed and has become final pursuant to Section 410.169.

Carrier appeals five specific findings of fact and three conclusions of law, arguing that the Commission had abused its discretion in approving the appointment of Dr. A as a new treating doctor, that the hearing officer "acted without reference to any guiding principles" in finding that the Commission had not abused its discretion in the appointment of Dr. A, that claimant did not have disability because claimant's then-treating doctor had released claimant to light duty as of June 29th and that claimant had received a bona fide offer of employment from the employer. Carrier also contends "the Hearing Officer abused his discretion in finding the Claimant credible as to some statements and/or facts and not credible as to others." Carrier requests that we reverse the hearing officer's decision on the appealed findings and render a decision in its favor. Claimant responds, urging affirmance.

DECISION

Affirmed on the appealed findings.

Our review of this case is limited to the specific appealed issues and findings. Affirmance of this case does not necessarily imply approval of all the commentary and unappealed findings.

Claimant was apparently a housekeeper with a hotel chain. It is undisputed that on March 31st claimant sustained a compensable left hand injury when he caught his left hand in a dryer between the moving drum and outer shell. Claimant sustained what is described as a "crush injury with incomplete amputation tip of left ring finger." Claimant was treated by Dr. Z. The evidence was that claimant apparently attempted to return to work in April, but was unable to do so. The medical records reflect that claimant had surgery in the form of debridement of the tip of the left ring finger "and cross-finger flap with full thickness skin graft to cover donor site" on May 11th by Dr. Z. On June 22nd claimant saw Dr. Z, who apparently told claimant that he was releasing claimant to light duty with a restriction that he exercise his hand/fingers 10 or 15 minutes every hour. Claimant continued to complain that his hand was still stiff and said he did not believe he was able to work. Claimant testified that he called his supervisor on June 28th and again on June 29th to keep her informed as

to his progress and his supervisor told him to see a doctor and not come in if he was not able to work. (Claimant's supervisor denied that she spoke to claimant on either June 28th or June 29th.) As the hearing officer notes, on June 29th "Claimant sought advice regarding his claim." Claimant testified that he believed he went to the Commission field office "but he did not." At an office he was given a copy of an Employee's Request to Change Treating Doctors (TWCC-53), told he could change treating doctors, received assistance in completing the form and was recommended to Dr. A as the new treating doctor. Claimant was adamant that this office was not Dr. A's office but was in the same building as Dr. A. Claimant saw Dr. A on June 29th and Dr. A took claimant off work and prescribed hand therapy and massage. Claimant then, on June 29th, went to the Commission's Dallas field office and filed his request to change treating doctors from Dr. Z to Dr. A, giving as his reason: "I am not improving under . . . [Dr. Z's] care. Still experiencing pain and loss of motion and numbness in the 2nd and 3rd digets [sic]." Claimant's request was approved by a Commission disability determination officer on July 1st.

Meanwhile, the employer wrote a letter dated June 23rd, making a purported bona fide offer of employment. There is some dispute as to when claimant received this letter. Claimant said that he received the yellow notice of a certified letter on July 1st and actually picked up and signed for the letter on July 2nd. Carrier did not introduce the "green receipt card," which would establish when claimant signed for the June 23rd letter. The hearing officer found that claimant received the bona fide offer on July 2nd and did not accept the offer.

Carrier specifically appealed the following determinations:

FINDINGS OF FACT

5. On July 1, 1998, the Commission approved the change to [Dr. A] as Claimant's TD [treating doctor] for proper reasons.
6. [Dr. A] was Claimant's TD beginning July 1, 1998 and continuing at least through the date of this hearing.
7. Claimant and the Commission followed appropriate procedures in processing and approving the change of TD to [Dr. A].
8. Claimant and [Dr. A] reasonably relied on the Commission's July 1, 1998 approval of the change of TD to [Dr. A].

* * * *

10. Claimant received employer's offer of employment on July 2, 1998. That was not a bona fide offer of employment because [Dr. A] had become Claimant's TD on July 1, 1998 and had taken Claimant off

work on June 29, 1998. It would have been a bona fide offer of employment, if [Dr. Z] had continued to be Claimant's TD.

CONCLUSIONS OF LAW

3. The Commission did not abuse its discretion in approving the change to [Dr. A] as the TD.

* * * *

6. Carrier should not be relieved and is not relieved of liability for treatment provided at the direction of [Dr. A].
7. After June 28, 1998, Claimant had disability beginning June 29, 1998 and continuing through the date of this hearing.

Upon review of the record, we affirm the hearing officer's findings on the specifically appealed determinations as being supported by the testimony and the documentary evidence and not being so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We do not address nor indorse the unappealed matter regarding the hearing officer's attempt to reverse the Commission's approval of a treating doctor change and the "reinstatement" of a prior treating doctor.

Regarding the carrier's contention that "the Hearing Officer abused his discretion in finding the Claimant credible as to some statements and/or facts and not credible as to others," we have previously stated that the hearing officer, as the trier of fact, is the sole judge of the weight and credibility that is to be given to the evidence, citing Section 410.165(a), and that the trier of fact may believe all, part or none of the testimony of any witness, citing Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ), and Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

The hearing officer's decision and order on the specific appealed determinations are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge