

APPEAL NO. 990123

A contested case hearing was originally held on October 8, 1998, under the provisions of the Texas Workers' Compensation Act, TEX. LAB CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 982552, decided December 2, 1998, the Appeals Panel affirmed the determination that the appellant's (claimant) compensable injury sustained on _____, included an injury to the neck. The Appeals Panel reversed the finding of fact that the request to change treating doctors was made to obtain a new medical report or impairment rating (IR) and that conclusion of law that the Texas Workers' Compensation Commission (Commission) abused its discretion in approving Dr. G as the claimant's new treating doctor and remanded for the hearing officer to consider information available to the Commission employee on June 25, 1998, when the Commission employee approved the request to change treating doctors and to make a finding or findings of fact and a conclusion of law to resolve the disputed issue of whether the Commission employee abused her discretion. The hearing officer did not convene another hearing and made the following findings of fact and conclusion of law on that disputed issue:

FINDINGS OF FACT

6. Claimant's initial treating doctor for his compensable injury of _____ was [Dr. T], M.D.
7. On June 19, 1998, Claimant requested the Commission to approve his request to change his treating doctor from [Dr. T] to [Dr. G].
8. The Commission approved Claimant's request to change treating doctors on June 25, 1998.
9. In approving Claimant's request to change his treating doctor from [Dr. T] to [Dr. G], the Commission's approval authority acted without regard to any guiding rules or principles.

CONCLUSION OF LAW

4. The Commission abused its discretion in approving [Dr. G] as Claimant's new treating doctor.

The claimant appealed, stated that the information available to the Commission employee who approved the request to change treating doctors would support a decision to approve or deny the request and that the employee did not abuse her discretion in approving the request, urged that the hearing officer improperly substituted her factual determination for that of the Commission employee, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the Commission employee did not abuse her discretion in approving the request to change treating doctors. The respondent

(carrier) replied, urged that the hearing officer did not apply the wrong standard and that her findings of fact and conclusion of law are not so against the great weight of the evidence as to be clearly wrong or unjust, contended that the claimant's statement that the information available to the Commission employee at the time the request to change treating doctors was submitted and considered supports the factual determinations made by the hearing officer on remand, and requested that the decision of the hearing officer be affirmed.

DECISION

We reverse the decision of the hearing officer and render a decision that the Commission employee did not abuse her discretion in approving the request to change treating doctors.

The evidence is summarized and parts of Section 408.022, SELECTION OF DOCTOR, and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 126.9 (Rule 126.9), Choice of Treating Doctor and Liability for Payment, are quoted in Appeal No. 982552, *supra*. Some of the summary of the evidence and reference to Commission rules will be repeated in this decision. Commission rules require that certain medical reports be sent to the carrier, the claimant, or the claimant's representative; but not to the Commission. Rule 130.1(h) requires that a doctor who completes a Report of Medical Evaluation (TWCC-69) send a copy to the Commission, the carrier, and the claimant. The record contains a TWCC-69 and narrative report from Dr. T dated May 13, 1998, in which the doctor states that the claimant reached maximum medical improvement (MMI) and had a six percent IR for a cervical injury. Stamps on those documents in the record indicate that they were received by the third party administrator for the carrier on June 15, 1998. The record does not indicate if and when they were received by the Commission. The file sent with the record contains a copy of the TWCC-69 with a stamp indicating that a copy was stamped as received by the Commission on May 15, 1998, but a copy of the TWCC-69 with that Commission stamp is not in the record. Health care providers are not required to send medical notes to the Commission. A note of Dr. T dated March 30, 1998, does not indicate that it was sent to anyone, but apparently it was just placed in the claimant's records. In a note dated June 25, 1998, Dr. T states that the results of an MRI were discussed, that the claimant desired to have orthoscopic surgery on his shoulder, and that preauthorization for the surgery would be sought. The note indicates that it was placed in Dr. T's records concerning the claimant and that a copy was sent to the claimant and the third party administrator. That note is dated the same day that the Commission employee approved the request to change treating doctors. There is nothing in the record to indicate that other medical records were received by the Commission. In an Employee's Request to Change Treating Doctors (TWCC-53) dated June 19, 1998, the claimant requested to change treating doctors from Dr. T to Dr. G and stated the reason as "I feel I'm not getting the best care for my current injuries." The request to change treating doctors; a Notice of Maximum Medical Improvement/Impairment Rating Dispute (TWCC-32) dated June 19, 1998, indicating that the claimant was disputing both the date of MMI and the IR and that the selection of a designated doctor was needed; and a letter from an attorney dated June 19,

1998, stating that a law firm was representing the claimant were received by the Commission on June 23, 1998. The Commission employee approved the request on June 25, 1998. The Commission employee who approved the request to change treating doctors did not testify at the hearing and the record does not contain a statement from her.

In the discussion in her Decision and Order, the hearing officer comments on medical records of Dr. T that are in the record without any indication that they were in the possession of the Commission. It was not proper for her to consider those records in determining whether the Commission employee abused her discretion in approving the change of treating doctors. She also comments on the TWCC-69 of Dr. T. Even though the record does not indicate that it was received by the Commission, it would not be unreasonable to believe that Dr. T sent the TWCC-69 to the Commission as required by a Commission rule and that it was received in a reasonable time.

At the time the Commission employee approved the request to change treating doctors, the Commission had the request to change treating doctors, the TWCC-69 of Dr. T certifying that the claimant had reached MMI and certifying an IR, the claimant's dispute of the certification of MMI and IR and request that a designated doctor be appointed, and the notice that the claimant was represented by an attorney. The record does not indicate how the Commission employee arrived at her decision to approve the request to change treating doctors. The claimant contends that the information available to the Commission employee was sufficient for her to approve or deny the request. We agree. The hearing officer's finding of fact that the Commission employee acted without regard to any guiding rules or principles when she approved the request to change treating

doctors and the conclusion of law that the Commission abused its discretion in approving the request are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and are reversed. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We render a decision that the Commission did not abuse its discretion in approving the request to change treating doctors from Dr. T to Dr. G.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge