APPEAL NO. 990189

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 7, 1998. On the single issue before him, the hearing officer determined that the Texas Workers' Compensation Commission abused its discretion in approving a change in treating doctor. The appellant (claimant) appeals, urging that the decision is based upon the hearing officer's gross mischaracterization of what the claimant said in reply to questions of why he decided to change doctors and that his change was for a proper reason, that is, that he was in a lot of pain and wanted a doctor who would listen to his concerns and help him get better. The respondent (carrier) urges that there is sufficient evidence to support the findings and conclusions of the hearing officer and asks that the decision be affirmed.

DECISION

Affirmed.

The evidence in this case is set out in considerable detail in the Decision and Order of the hearing officer and is a fair and adequate recitation. Very briefly, the claimant sustained lacerations to two fingers of his left hand and a puncture wound to his thigh on _____. He treated with Dr. B, M.D., who was his treating doctor and who was about 8 miles from his home in (city). The treatment included treating the lacerations, and continued treatment involving physical therapy (two different periods) starting in July 1998. The physical therapy was performed in (city 2) as a convenience, as this is where the claimant's family lived. Dr. B continued as the treating doctor and certified that the claimant reached maximum medical improvement (MMI) on September 18, 1998, with a seven percent impairment rating (IR). Dr. B released the claimant to his previous duty and indicated that the claimant needed to work to improve his condition. Claimant stated that he did not like this, that he wanted another doctor, and that he was not looking for another doctor to tell him not to work. He also acknowledged that Dr. B stated that if he had pain he could come back to him, but that he, the claimant, did not want to go back as he felt the treatment was not working. The claimant stated he continued to experience pain. A friend suggested a Dr. C, D.C. and the claimant went to his office and filled out an Employee's Request to Change Treating Doctors (TWCC-53), stating that "I have been treating with [Dr. B] and I'm still in a lot of pain. I need a doctor who will listen to my concerns and will help me get better." The change was approved on October 6, 1998, and the claimant saw Dr. C "about three times." Dr. C's treatment of the claimant consisted of exercises similar to those recommended by Dr. B, plus some anti-inflammatory creme. Although not entirely clear, it appears that the claimant returned to work shortly after seeing Dr. B on September 18, 1998.

The hearing officer, with the medical records from Dr. B before him, found that the claimant was receiving appropriate medical treatment from Dr. B at the time of the request for a change of treating doctor, that the treatment was appropriate to reach MMI, and that

there was no conflict between Dr. B and claimant jeopardizing or impairing the doctor-patient relationship. The hearing officer further found that claimant's request for a change of treating doctor was generated by Dr. B's releasing him to work and that claimant wanted a new medical report taking him off duty. Section 408.022 and implementing rules, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9), set forth the parameters for the request for and approval of a change of treating doctors. Dissatisfaction with a return-to-duty report or a desire for a new report of MMI or IR is not among the criteria for requesting or approving a change in treating doctor. Here, the hearing officer made factual findings, based on evidence before him, that none of the statutory or regulatory criteria was met. Whether or not a change in treating doctors, under the particular circumstance presented in a case, is appropriate or within the provision of the statute and rules is a factual matter for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 960715, decided June 21, 1996. From our review of the evidence we cannot conclude that the hearing officer abused his discretion in rejecting the basis for the approval of the requested change. Texas Workers' Compensation Commission Appeal No. 972480, decided January 16, 1998. *See also* Texas Workers' Compensation Commission Appeal No. 970686, decided June 4, 1997.

It is apparent that the hearing officer did not accord much weight to that part of the claimant's testimony which stated he did not seek a change in treating doctor to be taken off work. He was not bound to accept the claimant's testimony at face value. Bullard v. Universal Underwriters Insurance Company, 609 S.W.2d 621 (Tex. Civ. App.-Amarillo 1980, no writ). Given the course of treatment by Dr. B, the medical records from Dr. B, the circumstances surrounding the treatment, including the similarity in Dr. C's treatment, and the absence of indications that any of the criterion in the statute and rules was shown, we do not find error in the hearing officer's determination. Accordingly, the decision and order are affirmed.

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

CONCUR IN THE RESULT:

_____
Gary L. Kilgore
Appeals Judge