

APPEAL NO. 990665

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 5, 1999, a hearing was held. The hearing officer determined that respondent (claimant) had disability from October 7, 1998, through the date of the hearing; he also found that the appellant (carrier) did not contest a change in treating doctor within 10 days and therefore waived the ability to dispute that change. Carrier asserts that there is insufficient evidence to support the determination of disability, citing medical evidence; it also states that it disputed the change of treating doctor within 10 days by mailing a copy of the dispute to claimant. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_, when, she said, a 300-pound patient pulled herself to an upright position on a table by pulling on the claimant, causing her back to pop in two places. Claimant testified that she saw Dr. C (but none of his records were offered into evidence). Claimant testified that he ordered an MRI but no surgery was done. On February 20, 1998, claimant moved to (state) and ceased treatment by Dr. C.

In city 1, claimant began treatment with Dr. D. She attended work hardening in July and August 1998. What appears to be a functional capacity evaluation (FCE) provided in July 1998 shows that claimant had spasms during the evaluation but the therapist stated that the effort was good, even though the spasms occurred. Claimant said that Dr. D did provide some injections. None of the records offered of Dr. D refer to these injections; Dr. D did indicate that claimant could return to work as a "receptionist" without "heavy" lifting or bending. On August 14, 1998, Dr. D signed a form provided to him by saying again that claimant could return to work as a receptionist; he marked "yes" to a question of whether she reached maximum medical improvement (MMI) but did not provide a date of MMI or an amount of impairment rating (IR).

Claimant indicated that she was not happy with Dr. D's care, especially when she reported to him that she hurt herself doing the work hardening and, she said, he told her to continue it. She sent a request to change to Dr. L on October 7, 1998. Dr. L first saw claimant on October 7, 1998; he noted a history of Dr. D not having believed she was seriously injured until her FCE report was provided to him. He noted radiating pain from the low back to the leg, with numbness. Dr. L called for another MRI and a consult by a neurosurgeon. Dr. L wrote on December 2, 1998, that claimant should not be working pending the outcome of the MRI and consult with a neurosurgeon.

On November 16, 1998, claimant was seen by Dr. R for an evaluation requested by the carrier. He believed her source of pain was located at S1, but stated that "she did not have appropriate facet injections"; he advised that facet injections should be repeated,

saying that claimant was "not at [MMI]." He performed no IR. Both Dr. R and Dr. D mentioned a discogram, but no report of it was in the record. There was no showing that claimant has had the additional MRI requested by Dr. L or the neurological consult.

Claimant's request to change her doctor from Dr. D to Dr. L was approved on either October 13, 1998, or October 23, 1998; it was checked to show that a copy was sent to the carrier. Carrier provided a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated November 5, 1998, which shows that carrier disputed the change from Dr. D to Dr. L. There is no date of receipt, shown on the copy provided, indicating when, if ever, the Texas Workers' Compensation Commission (Commission) received this form. The Commission did receive a Request for Benefit Review Conference (TWCC-45), dated December 16, 1998, on December 18, 1998, which indicates that carrier disputed the change of treating doctor. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(g) (Rule 126.9(g)) provides that a party has to dispute a change of treating doctors within 10 days of its motion thereof.

With no evidence provided indicating when the November 5, 1998, TWCC-21 was provided to the Commission, there was sufficient evidence to support the determination that the carrier did not dispute the change of treating doctor until December 18, 1998, and to support the determination that carrier waived the right to dispute the change of treating doctor to Dr. L.

Dr. L's statement that claimant should be off work sufficiently supports the disability finding, and that determination is not inconsistent with the opinions expressed by the carrier-selected doctor, Dr. R, who examined claimant in November 1998.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge