

APPEAL NO. 990700

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 March 10, 1999. With respect to the sole issue before her, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving Dr. G as an alternate treating doctor. In its appeal, the appellant (carrier) argues that the hearing officer's determination that the Commission did not abuse its discretion in approving the change of treating doctors is against the great weight of the evidence. The carrier also asserts that the hearing officer was without jurisdiction to decide the issue before her under the doctrine of *res judicata* and that she erred in not adding an issue of whether the respondent (claimant) used "fraudulent tactics in obtaining a change of treating doctors." In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The facts of this case are largely undisputed. The parties stipulated that the claimant sustained a compensable left knee injury on _____. Dr. A became the claimant's treating doctor. On July 1, 1998, the claimant filed an Employee's Request to Change Treating Doctors (TWCC-53) requesting to change her treating doctor from Dr. A to Dr. G. The Commission approved the change on July 7, 1998. On October 7, 1998, a hearing was held before another hearing officer, who determined that the Commission had abused its discretion in approving the change from Dr. A to Dr. G, noting that the employee who had approved the change had not "sufficiently investigated" the request and that the evidence demonstrated that the change was "made to secure a new medical report. . . ." In Texas Workers' Compensation Commission Appeal No. 982668, decided December 21, 1998 (Unpublished), the Appeals Panel affirmed the hearing officer's determination that the Commission abused its discretion in approving the change of treating doctors.

On November 6, 1998, the claimant submitted a second TWCC-53 requesting to change her treating doctor from Dr. A to Dr. G. On her TWCC-53, the claimant listed as her reason for the change:

My treating doctor no longer wants to serve as my treating doctor. Also, I am dissatisfied with [Dr. A's] care and I feel [Dr. G] can help me better and help me recover faster.

The claimant attached a "To Whom it May Concern" letter to her TWCC-53, which is signed by Dr. A and states:

Please be advised that I will no longer serve as [claimant's] treating doctor. The claimant may seek medical care from another doctor.

A Commission official actions officer (OAO) approved the request on November 13, 1998. In approving the change the OAO stated "current treating doctor no longer wishes to serve as injured worker's treating doctor."

The carrier introduced a "To Whom it May Concern" letter at the hearing, signed by Dr. A, which states:

I, [Dr. A], was approached by my patient, [claimant], on 10/27/98 when she requested that I no longer serve as her treating doctor because she was dissatisfied with my care. I signed the form brought to me by the patient at her request.

On January 27, 1999, Dr. A gave a recorded statement to the carrier in which he confirmed that he signed the form given to him by the claimant, noting that he signed the form because she was unhappy with his care and he did not object to being released as her physician. Dr. A stated that he never indicated to the claimant that he did not want to serve as her doctor and that the claimant "instigated" the change of physicians.

Initially, we will consider the carrier's assertion that the hearing officer was without jurisdiction to consider the change of treating doctor issue in this case. The carrier contends that under the doctrine of *res judicata*, the hearing officer is precluded from considering this issue because of the prior determination by another hearing officer that the Commission abused its discretion in July 1998, when it approved the change from Dr. A to Dr. G. That decision was affirmed by the Appeals Panel in Appeal No. 982668, *supra*. We find no merit in this assertion. The carrier cites no authority for the proposition that a determination that the Commission abused its discretion in approving a prior change of treating doctors precludes a claimant from submitting a subsequent request to change treating doctors. Likewise, the carrier cites no authority for the proposition, that where, as here, a subsequent request to change treating doctors is made by the claimant and approved by the Commission, the Commission is bound by the decision concerning a wholly separate request and none is apparent to us. On the contrary, each request stands on its own and is subject to review in the dispute resolution process under an abuse of discretion standard.

Next, we consider the carrier's argument that the hearing officer erred in determining that the Commission did not abuse its discretion in approving the change from Dr. A to Dr. G in November 1998. We have frequently noted that the question of whether the Commission improperly approved a request to change treating doctors is reviewed under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 970686, decided June 4, 1997, and the cases cited therein. We have stated that an abuse of discretion occurs where the decision maker acts without reference to guiding rules and principles.

In this instance, when the OAO considered the request to change treating doctors from Dr. A to Dr. G, she was presented with a letter, signed by Dr. A, stating that he "will no

longer serve" as the claimant's treating doctor. In the face of such documentation, we simply cannot conclude that the OAO abused her discretion in approving the request to change treating doctors. The carrier makes much of the fact that Dr. A signed the letter stating he would no longer serve as the treating doctor at the claimant's request. The fact that the claimant asked Dr. A to discontinue his service as the treating doctor does not change the fact that Dr. A agreed to sever the doctor-patient relationship. In the face of a doctor's withdrawal as treating doctor, there seems to be little the OAO could have done but approve the change and we cannot agree that she abused her discretion in doing so.

Lastly, we consider the carrier's contention that the hearing officer erred in denying its request to add an issue of whether the claimant "used fraudulent tactics in obtaining a change of treating doctors." The hearing officer denied the request to add an issue, noting that it was subsumed in the broader issue of whether the Commission abused its discretion in approving the request to change treating doctors from Dr. A to Dr. G. We perceive no error in the hearing officer's determination in that regard. The carrier was permitted to argue that the claimant used "fraudulent tactics" to secure the change. Specifically, the carrier maintained that the claimant misrepresented that Dr. A would no longer serve as her treating doctor by failing to make it clear that Dr. A agreed to withdraw as her treating doctor only after she requested that he do so. While the claimant may have been more forthright in acknowledging that she had asked Dr. A to end his participation in her treatment, as we noted above Dr. A agreed to do so; thus, it became incumbent upon the Commission to resolve the issue of who would provide the claimant's reasonable and necessary medical treatment for her compensable injury.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge