

APPEAL NO. 991089

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 April 27, 1999. With respect to the sole issue before him, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving Dr. S as an alternate treating doctor. In its appeal, the appellant (carrier) asserts that the hearing officer's determination in that regard was "ultimately wrong and manifestly unjust." The appeals file does not contain a response to the carrier's appeal from the respondent (claimant).

DECISION

Affirmed.

The facts of this case are largely undisputed. The parties stipulated that the claimant sustained a compensable injury on _____. Dr. S became the claimant's treating doctor. In October 1998, the claimant hired an attorney to represent him in this claim. The claimant testified, and the hearing officer found, that as part of that representation, the claimant signed a blank Employee's Request to Change Treating Doctors (TWCC-53). That TWCC-53 is file-stamped as having been received in the field office handling the claim on October 8, 1998. It requests a change from Dr. S to Dr. P, a chiropractor, and states, as follows, the reason for the change:

I have been treating with [Dr. S]. I don't feel that I've received appropriate care. I tried to discuss this. I need a new doctor who understands this system, who can help me obtain the appropriate care and help me get well.

The claimant testified that he did not agree to the requested change and that he understood that in signing the TWCC-53 he was only agreeing to go for another medical examination.

On October 13, 1998, an official actions officer (OAO) approved the change from Dr. S to Dr. P. In a letter of October 14, 1998, the law firm that had been retained by the claimant sent him a letter stating "we cannot continue to represent you in this matter." On October 20, 1998, the claimant filed a second TWCC-53 requesting to change back to Dr. S as his treating doctor. In the section provided for giving the reason for the change, the claimant states:

I never agreed to change Treating Doc's and signed a 53 under the intention that is was for an additional medical exam per the attorney. This attorney no longer represents me and I never attempted to see this other Doc.

In an October 19, 1998, "To Whom it May Concern" letter, Dr. P states:

The purpose of this letter is to inform you that I am not interested in being the treating doctor for [claimant]. Please allow him to return to his previous doctor, [Dr. S], M. D. as the treating physician.

The firm that discontinued its representation of the claimant forwarded Dr. P's letter to him by letter of October 21, 1998, which provides:

Enclosed is a letter from [Dr. P] dated 10/19/98 which indicates he does not wish to be your treating doctor. I understand that you would like to continue treating with [Dr. S]. If so, you should file another request to change treating doctors (a form TWCC 53) with the commission office handling your claim, and attach a copy of [Dr. P's] letter to the TWCC-53 form. The commission should then approve [Dr. S] as your treating doctor since [Dr. P] does not wish to be your treating doctor.

I apologize for any inconvenience this change of doctors issue may have caused you.

On December 4, 1998, an OAO approved the change from Dr. P to Dr. S, noting that the "current treating doctor no longer wishes to treat injured worker."

The carrier argues that the hearing officer erred in determining that the Commission did not abuse its discretion in approving the change from Dr. P to Dr. S in December 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. An abuse of discretion occurs where the decision maker acts without reference to guiding rules and principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have previously determined that when testing for abuse of discretion, the hearing officer must consider the information before the Commission at the time the request was approved. Texas Workers' Compensation Commission Appeal No. 990328, decided April 5, 1999; Texas Workers' Compensation Commission Appeal No. 982552, decided December 2, 1998; Appeal No. 970686, *supra*; Texas Workers' Compensation Commission Appeal No. 962570, decided February 5, 1997.

In this instance, when the OAO considered the request to change treating doctors from Dr. P to Dr. S, she was presented with a letter, signed by Dr. P, stating that he was not interested in being the claimant's treating doctor. In light of such documentation, we simply cannot conclude that the OAO abused her discretion in approving the request to change treating doctors. In its appeal, the carrier argues that "this communication regarding [Dr. P's] unwillingness to treat the claimant was manufactured only for purposes of meeting the exception established in [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(e)(2)] Rule 126.9(e)(2). Rule 126.(e)(2) provides that a reason for approving a change in treating doctor includes the situation where "the selected doctor chooses not to

be responsible for coordinating [the] injured employee's health care" The carrier also asserts that it is "apparent that the claimant requested this very information from [his former attorney] in order to return back to his treating physician, [Dr. S]." The carrier cites as support for this argument a phrase purportedly contained in its Exhibit 4, which it represents as stating "[p]ursuant to your request, here is the letter from [Dr. P] regarding a change of treating doctors." However, as noted above, the "pursuant to your request" phrase is not included in that letter. Rather, it states "[e]nclosed is a letter from [Dr. P] dated 10/19/98 which indicates he does not wish to be your treating doctor." As such, the claimant's participation in the alleged solicitation of the letter from Dr. P is not as "apparent" as the carrier argues. Nonetheless, even if the claimant played some part in requesting that letter, it does not alter the fact that Dr. P agreed to sever the doctor-patient relationship that had not been established and stated in a letter, addressed to the Commission, that he was not interested in serving as the claimant's treating doctor. 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 find no merit in the assertion that she abused her discretion in so doing under the circumstances. The claimant cannot be "put adrift without any treating doctor." Texas Workers' Compensation Commission Appeal No. 960891, decided May 30, 1996.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge