

## APPEAL NO. 991258

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The first contested case hearing (CCH) was held on January 14, 1999. In her first decision and order, she (hearing officer) had determined that the appellant/cross-respondent (claimant) had disability for certain stated periods. She also determined that the claimant's employer made a bona fide offer of employment to claimant and that the Texas Workers' Compensation Commission (Commission) abused its discretion in approving Dr. FR as an alternate treating doctor. Claimant also sought clarification on appeal regarding the bona fide offer and temporary income benefits (TIBS). Claimant also appealed the determination that the Commission abused its discretion in approving the change of treating doctor. Respondent/cross-appellant (carrier) replied that the Appeals Panel should affirm the hearing officer's determinations regarding the request for a change of treating doctor and bona fide offer. In a cross-appeal, carrier contended that the hearing officer erred in determining that claimant had disability "for any point in time after July 28, 1998." Claimant responded that the disability determination should be affirmed. The Appeals Panel affirmed the hearing officer's disability determination. Texas Workers' Compensation Commission Appeal No. 990328, decided April 5, 1999. The Appeals Panel reversed the hearing officer's determination regarding the change of treating doctor and remanded the case to the hearing officer for findings in this regard based on the evidence that was before the Commission at the time the Employee's Request to Change Treating Doctors (TWCC-53) was processed. The Appeals Panel also remanded for clarification regarding the period of time that TIBS were not owed.

In a decision and order after remand, the hearing officer clarified the period of time when TIBS were not owed and again determined that the Commission abused its discretion in approving the change of treating doctor in this case. In an appeal after remand, claimant again contends the hearing officer abused her discretion in determining that the Commission abused its discretion in approving claimant's request for a change in treating doctors. Carrier responds that the Appeals Panel should affirm that determination. In a cross-appeal after remand, carrier again challenges the disability determination. However, the Appeals Panel affirmed the disability determination in Appeal No. 990328 and we will not revisit this issue again. Claimant did not respond to carrier's cross appeal. The determination regarding payment of TIBS and bona fide offer was not appealed after remand.

## DECISION

We reverse and render.

Claimant contends the hearing officer erred in determining that the Commission abused its discretion in approving Dr. FR as the claimant's new treating doctor. The facts, applicable law, and our standard of review are stated in our prior decision and will not be

repeated here. The request was approved by the Commission in July 1998. On her TWCC-53, claimant stated:

I have been treating with the doctor for quite some time. I don't feel that the insurance company has allowed me to receive appropriate medical care. I've 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.

In the decision and order on remand, the hearing officer stated that claimant inaccurately represented that she had been treating with Dr. FUL "for quite some time." The hearing officer stated that the Commission employee who approved the TWCC-53 could not have known this fact. We agree. Therefore, this will not be considered since the issue here is whether the Commission abused its discretion, and the facts to be considered are the facts known to the Commission at the time of the approval.

The hearing officer stated that the Commission employee who approved the TWCC-53 could not have known whether claimant was merely seeking a new medical report/off-work slip from a new treating doctor. We agree. The record does not show that this is something that was considered by the Commission employee. The hearing officer also stated that the reasons stated by claimant for her request for a change in treating doctors "did not fall under one of the criteria listed by the statute." We first note that the list of criteria is not exhaustive. Section 408.022(c).

The hearing officer stated that claimant's "primary concern" was that "the insurance company was denying medical treatment, not that it was not appropriately given" by Dr. FUL. The hearing officer stated that denial of medical treatment is an issue for the Medical Review division. We note that this case does not require the Appeals Panel to perform a sufficiency review of the hearing officer's factual determination of what she finds the claimant meant in her TWCC-53. We must apply an abuse of discretion appellate review standard and determine whether the hearing officer abused her discretion in determining that the Commission abused its discretion in approving the TWCC-53. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996. After reviewing the TWCC-53, we conclude that the Commission employee reviewing the TWCC-53 could have interpreted claimant's stated reasons for change as a request to receive "appropriate medical care to reach maximum medical improvement." Even though claimant indicated on the TWCC-53 that the insurance company had denied treatment, the pursuit of this issue in the Medical Review division would have called for some involvement by a medical provider who believed that the claimant did indeed need the medical care. Further, claimant asked for a new doctor who can help her "get well." The Commission employee could interpret this as a request for the doctor to provide, and see to it that claimant received, appropriate medical care. Because the Commission employee could have interpreted the TWCC-53 that way, we conclude that the hearing officer abused her discretion in this case.

The hearing officer also stated in the decision and order on remand that Dr. FUL "is well known to the Commission in workers' compensation cases." Again, this seems to be

addressing matters not stated on the TWCC-53 and which may or may not be known to the Commission employee who approved the TWCC-53.

We reverse that part of the hearing officer's decision and order that determines that there was an abuse of discretion in the order approving the change of treating doctors and render a determination that the Commission did not abuse its discretion in approving a change of treating doctors in this case.

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Judy Stephens  
Appeals Judge

CONCUR:

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Alan C. Ernst  
Appeals Judge

CONCUR IN RESULT:

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Thomas A. Knapp  
Appeals Judge