

APPEAL NO. 991297

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 28, 1999, a hearing was held. He (hearing officer) determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in denying a change of treating doctor from Dr. B to Dr. Z. Appellant (claimant) asserts that Dr. B's treatment was inappropriate because Dr. B told her to gain weight and take vitamins, that she is not limited to one change of treating doctor, and that the Commission abused its discretion in denying the change to Dr. Z. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm.

Claimant works for (employer). She takes reservations and uses a keyboard regularly to enter information. She testified that she had been diagnosed with carpal tunnel syndrome (CTS) and cubital tunnel syndrome. Her date of injury is \_\_\_\_\_. She has had surgery for CTS by Dr. VW, in 1995. She indicated that she did not want surgery in regard to the cubital tunnel syndrome. The evidence at hearing indicated that claimant has reached maximum medical improvement (MMI) and has an impairment rating and neither of those two milestones are in issue by claimant. Claimant is still working, and still using a computer, for employer.

As stated by the hearing officer, claimant began treatment with Dr. O. She then changed to Dr. VW, who performed surgery. She then changed to Dr. L who treated her from July 11, 1996, to November 12, 1998, at which time he wrote that he is no longer able to help her, that she would be more effectively treated by a chronic pain doctor, and recommended that she change treating doctors. He concluded by saying that her job is the root of the problem. Claimant then submitted an Employee's Request to Change Treating Doctors (TWCC-53) requesting that Dr. B be her treating doctor; he accepted on November 20, 1998. Claimant testified that Dr. B has done nothing for her; she stated that he wanted her to add weight and build her muscles. She stated that she knows that is wrong. She added that she knows her health—knows what helps her and what hurts her. She treated with Dr. B one time. She has asked Dr. B to refer her to Dr. Z. Claimant stated that she had seen Dr. Z in the past and believes he would help her; she had changed to Dr. B instead of Dr. Z because of proximity to Dr. B.

The Commission, on March 1, 1999, disapproved claimant's request for a change of treating doctors, stating that she has had an alternate choice and "no statutory exception applies." Dr. B's notes from claimant's visit indicate that he examined her neurologically; his impression was that she probably had a "mild ulnar nerve entrapment in the elbow worsened with repetitive use"; he noted that she was "skinny" and had "prominent medial epicondytes," and that she had a history of carpal tunnel surgery. He advised that she wear elbow pads, "start eating better," take supplements and "go back" to working out "at

least once a week." We note that Dr. L in addressing the elbow and the ulnar nerve in July 1998, had said that claimant "does have very little soft tissue over this area which may contribute in part to some of her ulnar nerve symptoms."

While claimant states that the Commission is not limited statutorily to one change of treating doctor, that is not the basis for the Commission's decision to deny the latest change. That comment was made along with observing that no statutory exception applies. Section 408.022(c) provides four criteria that the Commission "may" use. They include inappropriate medical treatment, the doctor's professional reputation, whether the treatment is appropriate to reach MMI, and whether there is a conflict between doctor and patient "to the extent" that jeopardizes the doctor-patient relationship (emphasis added). Also see Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9). We stress that both the 1989 Act and the rule, in listing several reasons to change treating doctors, state that the listed criteria are not the only reasons for changing. See Texas Workers' Compensation Commission Appeal No. 960266, decided March 28, 1996. However, Rule 126.9, while stating that reasons for change are not limited to those specified in the 1989 Act and the rule, only chooses to add one reason—that the doctor chooses not to be responsible for coordinating health care. The evidence as of March 1, 1999, is to be considered in determining whether the Commission abused its discretion. See Texas Workers' Compensation Commission Appeal No. 982552, decided December 2, 1998.

There was no evidence that the medical treatment proposed by Dr. B was inappropriate; addressing the amount of tissue in the area of the elbow had also been considered as a factor by Dr. L. There was no indication that Dr. B's medical reputation was in question. Claimant had stated that she has reached MMI. The last criterion is the most open to interpretation; claimant's request to change treating doctors, although not using the word "conflict," invokes this criterion; a conflict between doctor and patient has to be to an extent that the doctor-patient relationship is jeopardized. With only one visit and with no indication of a significant personality conflict (no conflict is indicated or even hinted at in Dr. B's single treatment record), claimant's own reason set forth on the TWCC-53 should provide an indication why claimant wants to change. See Texas Workers' Compensation Commission Appeal No. 970568, decided May 13, 1997, which said the Commission's decision should be based on the "reasons given in the TWCC-53." The TWCC-53 says that Dr. B told her to go to the gym, but she wrote, "if I follow his advice I won't be working at all"; otherwise claimant only said that she did "not wish" to use "this doctor" and would like to change to Dr. Z.

Dr. B's record of claimant's visit of January 14, 1999, preceded March 1, 1999; it showed that Dr. B only said that claimant should work out "at least once a week." The Commission did not abuse its discretion in denying the request to change treating doctors to Dr. Z after considering the provisions of Section 408.022; with the TWCC-53 raising no basis for change outside the reasons listed by Section 408.022, it was not reversible error to appear to base denial on the criteria in Section 408.022.

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).

Joe Sebesta  
Appeals Judge

CONCUR:

Gary L. Kilgore  
Appeals Judge

Tommy W. Lueders  
Appeals Judge