

APPEAL NO. 991719

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 6, 1999. The hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving Dr. S as a new treating doctor on February 24, 1999. Appellant (carrier) appeals, contending that the hearing officer abused her discretion in permitting the change of treating doctors. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends the hearing officer abused her discretion in determining that the Commission did not abuse its discretion in approving Dr. S as claimant's new treating doctor on February 24, 1999. Claimant's February 24, 1999, Employee's Request to Change Treating Doctors (TWCC-53) stated under "reason for change":

I am still suffering from excruciating pain and I do not feel that [Dr. C] is providing the appropriate medical care needed to reach [maximum medical improvement (MMI)]. I further feel that a conflict exists between [Dr. C] and myself and such a conflict has jeopardized the doctor-patient relationship.

The hearing officer determined that: (1) claimant had tried previously to change treating doctors from Dr. C to Dr. SE on the ground that Dr. C did not know what else to do for her, but the request was denied because Dr. SE's office is more than 75 miles away; (2) on January 7, 1999, the Commission received claimant's dispute of the designated doctor's seven percent impairment rating (IR); (3) on January 23, 1999, claimant filed a request to change treating doctors to Dr. S "on the basis that she continued to suffer 'excruciating pain,' did not believe Dr. C was 'providing appropriate medical care to reach [MMI],' and that a conflict exists that jeopardized the doctor-patient relationship"; (4) on February 24, 1999, the Commission approved this request; (5) the Commission employee who approved the TWCC-53 did not testify at the CCH; (6) the evidence did not establish that any medical reports other than the Report of Medical Evaluation (TWCC-69) and narrative of the designated doctor were received by TWCC before the February 24, 1999, Commission order; (7) claimant's request to change her treating doctor to Dr. S complied with the criteria identified in Section 408.022 as appropriate reasons for approving a change as provided in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9); (8) the information available to the Commission employee who approved the request did not establish that claimant sought to obtain a different medical report; and (9) the Commission did not abuse its discretion in approving Dr. S as a new treating doctor.

Section 408.022(b) provides, in part, that if an employee is dissatisfied with the initial choice of a doctor from the Commission's list, the employee may notify the Commission

and request authority to select an alternate doctor. Section 408.022(c) provides that the Commission shall prescribe the criteria to be used in granting the employee authority to select an alternate doctor and that the criteria may include: (1) whether treatment by the current treating doctor is medically appropriate, (2) the professional reputation of the doctor; (3) whether the employee is receiving appropriate medical care to reach MMI, and (4) whether a conflict exists between the employee and the doctor to the extent that the doctor-patient relationship is jeopardized or impaired. A request for a change of doctor will not be approved if it is made to secure a new IR or medical report. Section 408.022(d). Rule 126.9(e) provides that reasons for approving a change in treating doctor include but are not limited to the reasons listed in Section 408.022. A reason to change treating doctors may also be that the selected doctor chooses not to be responsible for coordinating the injured employee's health care. Rule 126.9(e). The list of criteria in Section 408.022(c) regarding proper reasons to request a change of treating doctor is not exhaustive.

The Appeals Panel applies an abuse of discretion standard in reviewing cases regarding requests to change treating doctors. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996. In determining whether the hearing officer has abused her discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Appeal No. 951943; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). In reviewing the Commission's actions in approving a request to change treating doctors, the hearing officer also looks to see whether the Commission has abused its discretion.

After reviewing the request to change treating doctors, we conclude that the Commission employee reviewing the TWCC-53 could have interpreted the TWCC-53 and decided that claimant wanted to change treating doctors because: (1) there is a conflict between the doctor and patient, and (2) she wishes to receive "appropriate medical care to reach [MMI]." Because the Commission employee could have interpreted the TWCC-53 that way, the hearing officer could find that the Commission employee followed guiding rules and principles in approving the request. It appears that the hearing officer also followed guiding rules and principles in making her determinations in this case. Regarding carrier's assertion that the distance to Dr. S's office should have been considered, there is no distance limitation in the applicable statute and rule considered in this case. We do not address whether travel for medical care is reasonable and necessary as this was not an issue at the CCH. See Rule 134.6; see *a/so* Texas Workers' Compensation Commission Appeal No. 960716, decided May 8, 1996. We perceive no abuse of discretion in the hearing officer's determinations.

Carrier asserts that the hearing officer should have considered and developed new evidence, not previously considered by the Commission, in deciding the issue of whether the Commission abused its discretion in approving the change of treating doctors. Texas Workers' Compensation Commission Appeal No. 990123, decided March 3, 1999. We have considered the carrier's assertions on appeal and we conclude that the hearing officer properly applied the law in this case. See Texas Workers' Compensation Commission Appeal No. 990328, decided April 5, 1999; Appeal No. 990123, *supra*; Texas Workers' Compensation Commission Appeal No. 982552, decided December 2, 1998.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge