

APPEAL NO. 992447

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 6, 1999, a hearing was held. She determined that the appellant (claimant) sought to change his treating doctor to secure a new medical report from Dr. D; she also found that claimant did not have disability from June 14, 1999, to the present. Claimant asserts that the hearing officer abused her discretion in not limiting herself to the information or facts known to the Texas Workers' Compensation Commission (Commission) at the time of the approval; he also states he had disability because he was only released to light duty. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We affirm, as modified.

Claimant worked for (employer). He testified that on _____, while at work cutting insulation, the index finger on his right hand was cut off and his middle finger was cut. There was no issue as to compensability. Claimant said he went to an emergency room, and from there was referred to Dr. M, a plastic surgeon, who became his treating doctor. Claimant also testified that he saw Dr. M weekly for about three months and that Dr. M performed surgery on his finger to restore it. He said he received physical therapy for two months. The parties stipulated that on June 8, 1999, Dr. M released claimant to regular duty on June 15, 1999.

Claimant further testified that when he saw Dr. M on June 8, 1999, he became upset when Dr. M said that he was going to release him back to work, but added that he did not become irrational and did not threaten Dr. M.

On cross-examination claimant stated that he "never" became dissatisfied with Dr. M's treatment, but "at the end" Dr. M "wanted to let me go back to work"; claimant said he did not like that and that he still had pain. He said "that" was why he changed treating doctors. Claimant also said at this time that he chose Dr. D from the phone book and that he wanted a second opinion. He added that he went to his present lawyer's office after he left Dr. M's office.

Claimant also stated that he signed a blank Employee's Request to Change Treating Doctors (TWCC-53) and did not complete the part that stated:

I have been treating with [Dr. M]. I don't feel that I've received appropriate medical care. I've tried to discuss this but I'm not getting anywhere with that. I need a doctor who understands this system, who can help me obtain appropriate care and help me get well.

Claimant added that he did not agree with the entry quoted above and would have written that he "wanted a second opinion"; he did not say what he wanted a second opinion about.

While answering questions from the hearing officer, claimant said that he saw his attorney the same day or the next day after he saw Dr. M (on June 8, 1999); he also said that he saw his attorney before he saw Dr. M; he also said he saw his attorney the day before; he also said he saw the attorney later the same day after he saw Dr. M. In other questions by the hearing officer, claimant said that Dr. D was recommended to him by his lawyer, that he knew nothing about Dr. D when he chose him and did not know whether he treated hands. The hearing officer observed that claimant seemed to have an index finger on the right hand, commenting that she could see his nail; claimant said that the tip was cut off and said his finger is stiff. Claimant also said that his finger has stayed the same since he began seeing Dr. D.

In a letter dated June 17, 1999, Dr. M said that he saw claimant on June 8, 1999, and that he was doing better at that time. He told claimant "he could return to work on June 15, 1999, for light duty" and said claimant then became "furious and irrational," saying that "I would pay for it." (Claimant also included in his appeal two documents dated in October and November 1999 [after the hearing under review] which indicate that Dr. M does not care to treat claimant anymore; those documents probably would not cause a change in the outcome of this case if it were remanded to the hearing officer for consideration so no remand will result therefrom.)

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. She determined that claimant provided a fraudulent document to the Commission in order to change his treating doctor to secure a new medical report. While claimant cites Texas Workers' Compensation Commission Appeal No. 991258, decided July 23, 1999, for its argument that the hearing officer abused her discretion in considering material other than the information that the Commission had at the time of the approval, Appeal No. 991258 did not overturn, or even distinguish itself from, Texas Workers' Compensation Commission Appeal No. 961187, decided July 31, 1996, and Texas Workers' Compensation Commission Appeal No. 981841, decided September 25, 1998.

Appeal No. 981841 best described the material the hearing officer could consider in reviewing action taken on a request to change a treating doctor when it said that the hearing officer could consider the circumstances surrounding the request to change treating doctors. Appeal No. 981841 did not allow the hearing officer to consider evidence that arose after the change but it did not limit the hearing officer only to evidence which the Commission had at the time of approval. (We would agree that in cases of fraud, the Commission would probably not have evidence of such at the time of determining whether to approve a request to change.) Both Appeal No. 981841 and Appeal No. 961187, *supra*, dealt with attempts to change a treating doctor who had reported a claimant was ready to return to work; both said that Section 408.022(d), which said a treating doctor could not be changed to secure a medical report, was applicable; and both affirmed the hearing officer who had found an abuse of discretion in the approval of the change.

The hearing officer stated in her Discussion that claimant changed treating doctors to secure another medical report and that claimant thought Dr. M's treatment was appropriate but provided a document to the Commission which said that Dr. M's treatment was not appropriate; the hearing officer called this "fraudulent." The hearing officer then found that claimant signed a blank TWCC-53, that he changed his doctor because he did not "feel" ready to return to work, that he did not "feel" that Dr. M's care was inappropriate, that he did not know Dr. D, and that he changed doctors to secure another medical report. The hearing officer considered the circumstances surrounding the request to change treating doctors; she did not abuse her discretion in finding that the claimant changed his treating doctor to secure a new medical report, which is prohibited by the 1989 Act. The evidence sufficiently supports her determination that the request to change the treating doctor should not have been approved.

The hearing officer found that disability was not present from June 14, 1999, to the present; that time period was set forth by the wording of the issue. While Dr. M's references to his release varied somewhat in their language, they all referred to June 15, 1999, or one week from June 8, 1999; none referred to June 14, 1999. Dr. D, however, first took claimant off work on June 14, 1999. Some of Dr. M's references indicate that claimant was released only to light duty, but one release does indicate it was to "regular duty." As stated, the parties stipulated that claimant was released to "regular duty," so any argument on appeal that the release was to light duty, incurring disability, is rejected. In her Discussion the hearing officer shows that she gave more weight to the opinion of Dr. M concerning disability. In finding that there was sufficient evidence to support the determination relative to disability, we do modify the term of no disability as beginning on June 15, 1999, not June 14, 1999.

Finding that the decision and order, as modified to state that disability was not present from June 15, 1999, to the present, 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:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge