APPEAL NO. 000235

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 January 3, 2000. The issue at the CCH was whether the Texas Workers' Compensation Commission (Commission) abused its discretion by approving Dr. P, D.C., as respondent's (claimant) treating doctor under Section 408.022(e). The hearing officer determined that the Commission did not abuse its discretion in approving Dr. P under Section 408.022(e). The appellant (carrier) appeals, requesting that the Appeals Panel reverse the hearing officer's decision and render a decision in its favor. The appeal file contains no response from claimant.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The parties stipulated that the claimant sustained a compensable injury. The parties stipulated that claimant's injury included a burn to both her knees. The claimant described the injury as a chemical burn and testified that she was having additional complications from it. The carrier argued that the claimant only suffered a chemical burn which was essentially healed. The claimant filed an Employee's Request to Change Treating Doctors (TWCC-53) dated July 28, 1999, requesting she be allowed to change treating doctors from Dr. J, M.D., to Dr. P. The claimant listed the following reason on the face of the TWCC-53 for requesting a change of treating doctors:

> My current treating doctor as [sic] turned my care over to [Dr. P] for rehab and occupational conditioning. He feels that his services are no longer needed.

A notation on the TWCC-53 by the Commission (Commission) official action officer indicated that Dr. J's office was contacted by the Commission and informed by Dr. J's office that Dr. J "has done all he could for injured worker." The claimant's request to change treating doctors was approved by the Commission on August 10, 1999. The carrier filed a Request for Benefit Review Conference (TWCC-45) concerning the change of treating doctors contending that the claimant was at maximum medical improvement (MMI) and required no further medical treatment. In this TWCC-45 the carrier also stated that it was disputing on the basis that mileage to Dr. P's office exceeded 20 miles one way.

The only issue before the hearing officer was whether the Commission abused its discretion by approving Dr. P under Section 408.022(e). The hearing officer found as fact that there was insufficient evidence to show by a preponderance of the evidence the Commission acted without reference to guiding rules and principles in approving Dr. P as the claimant's treating doctor and concluded that the Commission did not abuse its discretion in approving Dr. P under Section 408.022(e).

Section 408.022(e)(1) provides that for purposes of Section 408.022 a referral made by the doctor chosen by the employee is not a selection of an alternate doctor if the referral is medically reasonable and necessary. Section 408.022(e)(4)(C) provides that a change of treating doctors when the original doctor becomes unavailable or unable to provide medical care to the employee, is also not a selection of an alternate doctor. An employee seeking a change of treating doctor under Section 408.022(e) is not required to establish the application of one of the criteria for a change of treating doctors under Section 408.022(c).

The Appeals Panel has consistently applied an abuse of discretion standard in reviewing requests to change treating doctors. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996. In determining whether there has been an abuse of 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). We are satisfied that the appealed finding and the conclusion relating to the change of treating doctor issue in the present case are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We find no error in the hearing officer's finding that the Commission did not abuse its discretion where the information before the Commission at the time of the approval of the change of treating doctors showed that Dr. J's office had stated that Dr. J was no longer able to help the claimant and that the claimant represented that Dr. J had turned the claimant's care over to Dr. P.

The carrier's argument that evidence that the claimant was at MMI established that the claimant did not require any further medical treatment is without merit. The very concept flies in the face of Section 408.021 which provides for lifetime medical benefits when reasonable and necessary for injured workers. Since all claimant's eventually reach MMI, by statute or otherwise, no claimant would be eligible for lifetime medical benefits if the carrier's argument were valid.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge