

APPEAL NO. 000313

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 5, 2000. With respect to the single issue before her, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in not approving Dr. P as an alternate doctor. The appellant (claimant) appeals, contending that because the respondent (carrier) is denying treatment, claimant's current treating doctor, Dr. G, is unwilling to treat him and that the Commission should approve an alternate doctor. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. Shortly after his injury, Dr. G became the claimant's treating doctor. In a report dated January 25, 1999, Dr. G stated that he had requested a "global fusion of [claimant's] lumbar spine." However, that surgery has apparently not been approved in the spinal surgery second opinion process. At some point, the carrier had the claimant examined by a peer review doctor and the doctor who performed that examination opined that no further treatment was reasonable and necessary. Based upon that examination, the carrier has denied further medical treatment for the claimant. The claimant testified that Dr. G has told him that he could no longer treat him because the carrier will not pay for treatment but that if the claimant will pay \$75.00 per visit, Dr. G will continue to provide treatment. In addition, the claimant testified that Dr. G has not advised him that he will seek to have the claimant's treatment approved by pursuing a dispute in the Commission's Medical Review Division.

In August 1999, the claimant submitted an Employee's Request to Change Treating Doctors (TWCC-53) seeking to change his treating doctor from Dr. G to Dr. P, a chiropractor. In the section provided for listing the reason for the change, the TWCC-53 states:

Carrier had peer review done, came back stating no further medical treatment needed. As such, [Dr. G] will not treat patient further. Patient still in pain and in need of further medical treatment.

On September 2, 1999, a Commission Official Actions Officer (OAO) denied the request. The reason given for the denial of the request is "[c]urrent treating doctor is willing to treat you." A Dispute Resolution Information System (DRIS) note in evidence states that, when she was reviewing the TWCC-53, the OAO contacted Dr. G's office and was advised that Dr. G is still willing to treat the claimant and that Dr. G "will accept clt for ofc visits." The same DRIS note also indicates that the OAO contacted the adjuster for the carrier assigned to the claimant's file and was advised that the carrier would deny treatment from

Dr. P also, if the change of treating doctor was approved. The claimant testified that he had spoken to Dr. P about taking over his care and had advised Dr. P that the carrier was denying treatment. He stated that Dr. P had assured him that he would try to help him receive treatment. On cross-examination, the claimant testified that he did not have any problems with Dr. G's treatment, his concern was that the treatment had been stopped when the carrier refused payment and Dr. G told the claimant that he could no longer treat him as a result.

The claimant argues that the hearing officer erred in determining that the Commission did not abuse its discretion in denying the change from Dr. G to Dr. P. We have frequently noted that the question of whether the Commission improperly denied a request to change treating doctors is reviewed under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 970686, decided June 4, 1997, and the cases cited therein. An abuse of discretion occurs where the decision maker acts without reference to guiding rules and principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). The hearing officer determined that the OAO did not abuse her discretion in denying the request to change treating doctors. The hearing officer emphasized that before she denied the request, the OAO contacted Dr. G's office and was advised that Dr. G was willing to continue his treatment of the claimant and that Dr. G would schedule office visits for him. With those assurances, the OAO denied the request. The hearing officer determined that the OAO "properly considered the request to change doctors based on the reasons stated on the TWCC-53, the information she had at the time of the request and the guiding rules and principles." Our review of the record does not reveal that the hearing officer erred in so finding. Accordingly, we cannot agree that the hearing officer abused her discretion in determining that the Commission did not abuse its discretion in denying the request to change treating doctors from Dr. G to Dr. P; thus, we affirm that determination. We note that if in the future Dr. G will not schedule office visits and/or refuses to provide treatment to the claimant in light of the carrier's continued denial of medical benefits, contrary to Dr. G's assurances to the OAO, the claimant can file another request to change treating doctors. In addition, it appears that it is incumbent upon someone to pursue a dispute for reasonable and necessary medical treatment for the claimant in the Commission's Medical Review Division.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge