

APPEAL NO. 000998

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 6, 2000. The hearing officer determined that the Texas Workers' Compensation Commission (Commission) abused its discretion in approving Dr. N as an alternate treating doctor. The appellant (claimant) requested review, contended that the hearing officer should have considered only the information available to the Commission at the time the request to change treating doctors was approved, urged that the determination of the hearing officer is against the great weight of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the Commission did not abuse its discretion in approving the change of treating doctors. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The claimant was injured on _____. He filed an Employee's Request to Change Treating Doctors (TWCC-53) dated July 22, 1999, to change treating doctors to Dr. D. A Commission employee approved the request on July 30, 1999. The claimant filed another TWCC-53 dated September 29, 1999. The reason stated on the TWCC-53 is "[Dr. D] withdraw me and I choose [Dr. N] as my treating doctor." On October 1, 1999, a Commission employee approved the request and wrote "[p]er letter dated 9-30-99, [Dr. D] is no longer available." The September 30, 1999, letter signed by Dr. D states:

[Claimant] was first treated in our office on July 22, 1999 until August 02, 1999. Per the patient's request of transferring treating doctor to [Dr. N], D.C., we are withdrawing as the primary treating doctor for this patient.

On March 9, 2000, Dr. D provided sworn answers to questions asked by the carrier. The answers indicate Dr. D treated the claimant from July 22 through August 2, 1999; that Dr. D's staff was unable to determine why the claimant stopped keeping his appointments; and that about a month later the claimant and Dr. N contacted Dr. D's office and requested a referral. To the question "[d]o you believe you had a good doctor/patient relationship with [claimant]?", Dr. D replied:

No. My answer is based on the fact that said patient chose to discontinue treatment at our facility and seek a third doctor when objective findings indicated that he was improving.

Dr. D responded “yes” to the following question asked by the claimant:

Did you write the letter attached hereto as Exhibit 1 [the September 30, 1999, letter] with the intent to convey that you would not be primarily responsible for coordinating [claimant’s] health care for the work-related injuries he sustained on _____?

As a general rule in a case involving a request to change treating doctors, the hearing officer is limited to considering the information available to the Commission at the time that the request to change treating doctors was approved or denied. However, if fraud is involved, the hearing officer may consider evidence of the fraud that is obtained later. Texas Workers’ Compensation Commission Appeal No. 992447, decided December 22, 1999. The hearing officer did not err in considering information from Dr. D that was obtained after the Commission employee approved the request to change treating doctors on October 1, 1999.

At the hearing, the carrier agreed that the burden was on it to prove that the Commission employee abused his discretion in approving the request to change treating doctors. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness’s testimony because the finder of fact judges the credibility of each and every witness, the weight to assign to each witness’s testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref’d n.r.e.); Texas Workers’ Compensation Commission Appeal No. 93426, decided July 5, 1993. Section 408.022(c) lists some criteria to be used in granting a request to select an alternate treating doctor. Section 408.022(d) provides that a change of treating doctors may not be made to secure a new impairment rating or medical report. The hearing officer’s determination that the Commission abused its discretion in approving Dr. N as an alternate doctor is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King’s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determination of the hearing officer, we will not substitute our judgment for his. Texas Workers’ Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge