

## APPEAL NO. 001075

On April 26, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that the compensable injury of \_\_\_\_\_, does not extend to appellant's (claimant) low back; that claimant has not had disability from November 25, 1999, through April 26, 2000; and that the Texas Workers' Compensation Commission (Commission) abused its discretion in authorizing Dr. F as an alternate doctor. Claimant requests that the hearing officer's decision on all issues be reversed and that a decision be rendered in his favor. Respondent (carrier) requests that the hearing officer's decision be affirmed.

### DECISION

Affirmed.

On \_\_\_\_\_, claimant was standing on five-foot-high stilts working on a ceiling when he fell and fractured his right forearm. The parties stipulated that claimant sustained a compensable injury on \_\_\_\_\_. Dr. E performed surgery on the forearm fracture on September 23, 1999, took claimant off work, and in October 1999 referred claimant for physical therapy for his right arm. Dr. E wrote on November 24, 1999, that he would refer claimant for a functional capacity evaluation (FCE) and then schedule claimant for work hardening. The FCE report of December 9, 1999, noted that claimant was qualified for full-time work, but that he may benefit from a work hardening program. According to a document in evidence, carrier approved a six-week work hardening program on December 16, 1999. Claimant said he was in jail from December 29, 1999, to January 14, 2000, because of traffic tickets. Claimant said that Dr. E had him off work when he went to jail. Claimant said that when he got out of jail, Dr. E told him there was nothing more he could do for him because carrier would not pay for the work hardening program. Claimant said that after he got out of jail he hired his attorney because carrier had stopped his benefits. Claimant said his attorney referred him to Dr. F, a chiropractor. Claimant said that he has not worked since he got out of jail. In an Employee's Request to Change Treating Doctors (TWCC-53) dated January 19, 2000, claimant wrote that he wanted to change treating doctors from Dr. E to Dr. F to try an alternative form of health care so that he can get well and return to work. A Commission official actions officer approved the request on February 1, 2000. Claimant said that he has had lower back pain ever since his injury of \_\_\_\_\_; that the back pain became worse about one and one-half months after that injury; and that Dr. F was the first healthcare provider he told about his back pain. He also said that he went to Dr. F because he needed a doctor to treat his right arm. In a case history form claimant filled out for Dr. F, claimant noted his accident, his forearm surgery, and his back pain. In his initial report of February 8, 2000, Dr. F diagnosed claimant as having pain and weakness of the right forearm and a sprain/strain of the low back. In a work status report, Dr. F noted that the injury was to the right arm and back and reported that claimant would be unable to work from February 10th until at least April 2000. Dr. F also wrote that claimant could have sustained a sprain/strain to his lumbar spine when he fell on \_\_\_\_\_.

Compensable injury and disability are defined in Sections 401.011(10) and (16), respectively, and Section 408.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9) provide criteria for authorizing a change of treating doctor. The hearing officer determined that the compensable injury of \_\_\_\_\_, does not extend to claimant's low back; that claimant has not had disability from November 25, 1999, through April 26, 2000; and that the Commission abused its discretion in authorizing Dr. F as an alternate doctor in that the change was sought for an illegal purpose, that being to manufacture a low back injury to obtain additional income benefits. Claimant contends that he met his burden of proof on all issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and may believe all, part, or none of the testimony of any witness. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge