

## APPEAL NO. 001305

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 000442, decided April 13, 2000. On May 9, 2000, a hearing on remand was held in (city 1), Texas. The parties did not produce additional evidence at the hearing on remand; rather, they only presented argument. With respect to the single issue before her on remand, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving Dr. P, a chiropractor, as an alternate treating doctor. In its appeal, the appellant (carrier) asserts error in that determination. In his response to the carrier's appeal, the respondent (claimant) urges affirmance.

### DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, while he was working in (city 2), Texas. Initially, the claimant began treating with Dr. L, a chiropractor. On July 26, 1999, the claimant signed an Employee's Request to Change Treating Doctors (TWCC-53) seeking to change treating doctors from Dr. L to Dr. H, another chiropractor. On August 2, 1999, the Commission approved that change. On August 9, 1999, the claimant submitted a letter to the Commission on letterhead from Dr. L's office asking to rescind the TWCC-53 and requesting that he be permitted to continue treating with Dr. L. The Commission canceled the order approving Dr. H as the treating doctor. Dr. L released the claimant to part-time, light-duty work and in a letter dated August 20, 1999, the employer offered the claimant a part-time job within the restrictions outlined by Dr. L. The claimant declined that offer of employment. On August 23, 1999, the claimant signed a second TWCC-53 requesting to change treating doctors from Dr. L to Dr. S, a chiropractor. The claimant testified that a nurse from Dr. L's office completed the form for him to sign because he does not read and write English. The section of the TWCC-53 which asks for the reason for the request states:

was uncomfortable with [Dr. L] because he didn't take x-rays and he is still in a lot of pain. He also wanted to send him back to work before he thought he was ready. He still has a lot of back pain.

On August 26, 1999, the Commission approved the change to Dr. S. Thereafter the claimant moved from city 2 to city 1. Thus, he submitted another request to change treating doctors from Dr. S in city 2 to Dr. G, a chiropractor, in city 1. On September 20, 1999, the Commission approved that request. Dr. G released the claimant to return to full-time, light-duty work and the employer again offered the claimant a light-duty position, which he declined. On October 1, 1999, the claimant submitted another TWCC-53 seeking to change treating doctors from Dr. G to Dr. P. The reason listed for the change is "I am not happy with treatment from current treating doctor. I have severe pain at this time. I would like to switch to [Dr. P] – I would like to switch to a rehabilitation specialist." On

October 7, 1999, an Official Actions Officer (OAO) with the Commission approved the change to Dr. P.

The claimant had his initial appointment with Dr. P on October 13, 1999. In his report, Dr. P diagnosed lumbar radiculopathy, thoracic segmental dysfunction, and thoracic and lumbar myofascitis. Dr. P also stated that he had to rule out lumbar herniation; thus, he referred the claimant for a lumbar and thoracic MRI. The October 19, 1999, lumbar MRI revealed a "moderate size right posterior subligamentous herniation at L4-5," which "mildly indents the sac and moderately narrows the right foramen and abuts the emanating right L4 root." The thoracic MRI demonstrated bulging at T6-7, T8-9, and T9-10. On November 1, 1999, the claimant was examined by Dr. B, an orthopedic surgeon, to whom he had been referred by Dr. P. Dr. B confirmed that the MRI demonstrated bulging discs in the thoracic spine and herniation at L4-5 and diagnosed a thoracic strain and lumbar herniation, stated that the claimant's injury was caused by his "accident at work on \_\_\_\_\_" and opined that the claimant "is unable to work." Dr. P also referred the claimant to Dr. D, another orthopedic surgeon, who requested a lumbar myelogram and post-myelogram CT scan. The myelogram and post-myelogram CT scan were performed on January 24, 2000, which confirmed the herniation at L4-5. In a letter dated January 25, 2000, Dr. P stated that he had discussed the results of the claimant's myelogram and CT scan with Dr. D and that Dr. D has agreed that the claimant is a surgical candidate. On January 27, 2000, a recommendation for spinal surgery was submitted.

The carrier argues that the hearing officer erred in determining that the Commission did not abuse its discretion in approving the change from Dr. G to Dr. P. We have frequently noted that the question of whether the Commission improperly approved 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 carrier contends that the proper focus in making the determination of whether the Commission abused its discretion is on the information available to the OAO at the time she approved the change of treating doctor request. In making the determination that the Commission did not abuse its discretion, the hearing officer noted that the initial change of treating doctor from Dr. L to Dr. H was rescinded and that the rescission was documented on both the first and second TWCC-53s. In the September 8, 1999, TWCC-53, the claimant requested to change treating doctors from Dr. S in city 2 to Dr. G in city 1 because he had moved. The hearing officer properly noted that a change of treating doctor because of a change of residence is not considered a selection of an alternate doctor pursuant to Section 408.022(e)(5). The change of treating doctor at issue in this case is the change from Dr. G to Dr. P, which was approved on October 7, 1999. On the TWCC-53 requesting the change, the claimant listed the reasons for the change as his not being happy with the treatment he was receiving from his current treating doctor, his continued severe pain, and his desire to treat with a rehabilitation specialist. The hearing officer stated that "these reasons set forth on the TWCC-53 fall under Section 408.022(c)." Thus, she concluded that the Commission did not abuse its discretion in

approving the change of treating doctor. Our review of the record does not reveal that the hearing officer abused her discretion in so finding. Accordingly, we will not disturb the hearing officer's decision on appeal.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge