

## APPEAL NO. 001903

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 July 6, 2000. The hearing officer determined that the Texas Workers' Compensation Commission (Commission) abused its discretion in approving the April 12, 2000, Employee's Request to Change Treating Doctors (TWCC-53) form filed by the appellant (claimant). Claimant appealed this determination, contending that he sought a change in treating doctor so that he could obtain better treatment and not to obtain a different impairment rating (IR) or medical report regarding disability. Respondent (self-insured) responded that the Appeals Panel should affirm the hearing officer's decision and order.

### DECISION

We reverse and remand.

Claimant complains of the hearing officer's determination that the Commission abused its discretion in approving his request for a change of treating doctor. He asserts that he sought a change in treating doctor so that he could obtain better treatment and that it was not to obtain a different IR or medical report regarding disability. Claimant also contends that the hearing officer erred in considering information that was not before the Commission official who considered and approved the TWCC-53.

In this case, the hearing officer was to look at the Commission's actions and consider whether there was an abuse of discretion by the Commission, given the facts that were before the Commission employee who considered the TWCC-53. The hearing officer must look to see whether the Commission acted without reference to any guiding rules or principles. See Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). For instance, Rule 126.9(e), which lists some reasons for approving a TWCC-53, is one guiding rule the Commission employee must consider. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(e) (Rule 126.9(e)).

From the decision and order, it appears that the hearing officer considered information that was not available to the Commission employee who considered the request to change treating doctors. We reverse Conclusion of Law No. 5 and we remand for the hearing officer to: (1) consider information available to the Commission employee on April 13, 2000, when the employee approved the request to change treating doctors; and (2) make fact findings and a conclusion of law to resolve the issue of whether the Commission abused its discretion, considering the facts then known and the TWCC-53.

We reverse the hearing officer's decision and order and remand for further proceedings consistent with this decision. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to

appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge