APPEAL NO. 001904

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 26, 2000. The hearing officer determined that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in appointing Dr. La as an alternate doctor and that the respondent (claimant) had disability resulting from the compensable injury of _____, beginning on January 3, 2000, and continuing through the date of the hearing. The appellant (carrier) has appealed the hearing officer's determinations, contending that the evidence established as a matter of law that the Commission had abused its discretion in appointing Dr. La as an alternate doctor and that the claimant had no disability resulting from the compensable injury, or, alternatively, that the hearing officer's determinations were against the great weight and preponderance of the evidence. The claimant asserts in response that the hearing officer's decision is supported by the evidence and requests that the decision be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury, including a fractured left hip and a concussion, when he fell approximately eight feet to the floor from a ladder. The existence of a compensable injury is not disputed. The claimant was off work for a time, then was released to return to work on sedentary duty by his orthopedist, Dr. H, on October 8, 1999. At that time the claimant was also under the care of a neurologist, Dr. L. The claimant worked sedentary duty for a while, then was released to regular duty by Dr. H on November 8, 1999. However, since the claimant was still under Dr. L's care, the employer continued the claimant on light duty pending a full release from Dr. L.

On December 9, 1999, the claimant was suspected by the employer of being under the influence of alcohol and the claimant was asked to submit to a breath test. He was taken to (clinic 1) where a blood sample was drawn for toxicological testing. Because breath alcohol testing equipment was not available at clinic 1, the claimant was then taken to (clinic 2) where a sample of his breath was taken for blood alcohol testing. The breath alcohol test indicated that the claimant was intoxicated and the claimant was terminated for violation of company policy.

On the day of his termination, the claimant made an appointment to see Dr. La. On December 20, 1999, the claimant filed a request to change treating doctors from Dr. H to Dr. La and that request was approved by the Commission on December 28, 1999. The reason given in the request to change treating doctors was as follows:

> I am in pain and I need treatment to relieve me of my pain. My current doctor does not listen to me when I tell him I need help with my pain. I need a doctor that will help me with this pain so I can get better and able to go back to work.

Carrier argues that the Commission abused its discretion in approving the request, asserting that the only reason the claimant changed treating doctors was to obtain a work release. 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).

In considering a request to change treating doctors, the Commission looks to Section 408.022 of the 1989 Act which states in part:

> Sec. 408.022. SELECTION OF DOCTOR.
>
> (c) The commission shall prescribe criteria to be used by the commission in granting the employee authority to select an alternate doctor. The criteria may include:
>
> (1) whether treatment by the current doctor is medically inappropriate;
>
> (2) the professional reputation of the doctor;
>
> (3) whether the employee is receiving appropriate medical care to reach maximum medical improvement [MMI]; and
>
> (4) whether a conflict exists between the employee and the doctor to the extent that the doctor-patient relationship is jeopardized or impaired.
>
> (d) A change of doctor may not be made to secure a new impairment rating or medical report.

The hearing officer determined that the Official Actions Officer who approved the change of treating doctor could well have determined that the reason given by the claimant in requesting a change of treating doctor was in order to insure that he received appropriate medical care to reach MMI.

In Appeal No. 970686, *supra*, the Appeals Panel affirmed a hearing officer's decision that the Commission did not abuse its discretion in approving a change of treating doctor even though the claimant simply stated that he was not getting better. Under the guidance of Appeal No. 970686, and the cases cited therein, we find no merit in the assertion that the hearing officer erred in determining that the Official Actions Officer who approved the change of treating doctor did not abuse her discretion in approving the change. Accordingly, no basis exists for our reversing the hearing officer's decision on appeal.

The claimant's first appointment with Dr. La was on January 3, 2000, at which time Dr. La took the claimant off work completely. As of the date of the CCH, Dr. La had not released the claimant to return to work in any capacity. The carrier points to the claimant's testimony at the hearing that he felt he was able to do the light work which had been afforded him by the employer despite his doctor's advice that he not work. Similarly, the carrier points out that the claimant had ignored his doctors' advice, had discontinued medication and had checked himself out of the hospital. Whether the claimant was able to perform the light-duty work, thereby rendering the termination as the reason for the inability to obtain and retain employment rather than the compensable injury, or whether the compensable injury was the reason for the inability to work, accepting Dr. La's assessment of his patient's condition and prognosis, was a fact issue to be resolved by the hearing officer.

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 testimony of the claimant only raises a factual issue to be resolved by the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's 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. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The decision of the hearing officer that the Commission did not abuse its discretion in appointing an alternate doctor and that the claimant had disability resulting from the compensable injury beginning on January 3, 2000, and continuing through the date of the hearing is supported by credible evidence and is affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge