

APPEAL NO. 001950

Following a contested case hearing held on August 1, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the Texas Workers' Compensation Commission (Commission) abused its authority in approving the appellant's (claimant) request to change treating doctors. The claimant appeals, arguing that she did not request a change of treating doctors because her treating doctor released her to work, but because her treating doctor would not see her. The respondent (carrier) responds that the hearing officer's decision was supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

It was undisputed that the claimant suffered a compensable injury and that Dr. S was the claimant's treating doctor. The claimant testified that as of April 7, 2000, she was aware that Dr. S had released her to restricted work and that her employer had offered her work under these restrictions. The claimant testified that she tried three times to make an appointment to see Dr. S between March 29 and April 7, 2000. She testified that Dr. S refused to set up an appointment each time but he told her he would see her for her scheduled April 10, 2000, appointment. The claimant filed an Employee's Request to Change Treating Doctors (TWCC-53) dated April 7, 2000, in which she gave the following reason for her need to request a new treating doctor: "need to heal from surgery & have physical therapy." This request to change treating doctors was approved by the Commission on April 12, 2000.

The hearing officer makes clear in his decision that he determined that the Commission abused its discretion in granting the claimant's request to change treating doctors on two separate bases—that the claimant's request was motivated by a desire to remain in an off-work status and that the TWCC-53, on its face, was insufficient to establish a valid basis for changing treating doctors.

The Appeals Panel applies an abuse of discretion standard in reviewing cases regarding requests to change treating doctors. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996. In determining whether the hearing officer has abused his or her discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Appeal No. 951943; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). In reviewing the Commission's actions in approving a request to change treating doctors, the hearing officer also looks to see whether the Commission has abused its discretion.

Section 408.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9) deal with selection of treating doctors and change of treating doctors. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Applying these principles to the facts of this case, we find no abuse of discretion by the hearing officer.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge