

APPEAL NO. 002156

Following a contested case hearing (CCH) held on August 24, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving a change of treating doctor; that the employer did not make a bona fide offer of employment to the respondent (claimant); and that the claimant had disability from June 5, 2000, through the date of the CCH. The appellant (carrier) files a request for review, contending the hearing officer erred by finding that the Commission did not abuse its discretion by approving a change of treating doctor. The claimant responds that the hearing officer did not err by finding no abuse of discretion.

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.

Many of the facts of the case are not in dispute. The parties stipulated that the claimant suffered a compensable injury on _____. The claimant testified that she injured her back while lifting a three-gallon jug of water. The claimant treated with Dr. H. The claimant testified that she became dissatisfied with Dr. H's treatment plan, but continued to treat with him based upon his promise that he would refer her to a specialist. The claimant last saw Dr. H on April 5, 2000, and testified that prior to May 5, 1999, she was in contact with the carrier's adjuster concerning changing treating doctors and that the carrier engaged a vocational nurse to assist the claimant in choosing another doctor. Dr. H testified that his office was unable to reach the claimant and that the employer continued to press him to return the claimant to light work, so he released the claimant to light work in early May 2000. On May 17, 2000, the claimant filed a request to change treating doctors to Dr. Ha, and this request was approved by the Commission on May 24, 2000. The claimant testified that Dr. Ha's office completed an Employee's Request to Change Treating Doctors (TWCC-53) and that she signed the TWCC-53. The TWCC-53 stated the following reason for the request:

I am not satisfied with treatment from the current treating Doctor. I am in severe pain. I would like to switch to [Dr. Ha]. I would like to switch to a rehabilitation specialist.

The hearing officer's findings of fact and conclusions of law include the following:

FINDING OF FACT

2. Claimant was a credible witness and established that she was dissatisfied with her medical treatment with [Dr. H] and desired to

change doctors before she was released to light duty work for Employer.

CONCLUSION OF LAW

3. The Commission did not abuse its discretion in approving [Dr. Ha] as an alternate treating doctor.

The carrier recognizes in its request for review that the standard for reviewing orders granting a change of treating doctors is an abuse of discretion citing Texas Workers' Compensation Commission Appeal No. 960891, decided May 30, 1996. The carrier also recognizes that the determination of whether there was an abuse of discretion must be based on information available to the Commission employee approving the request, citing Texas Workers' Compensation Commission Appeal No. 990328, decided April 5, 1999, and Texas Workers' Compensation Commission Appeal No. 982552, decided December 2, 1998. Finally, the carrier recognizes that there have been a number of Appeals Panel decisions approving a change of doctor because of dissatisfaction with the current treatment or because of the expectation of better treatment with another doctor, citing Texas Workers' Compensation Commission Appeal No. 970686, decided June 4, 1997, and Texas Workers' Compensation Commission Appeal No. 961888, decided November 8, 1996.

The carrier argues that these Appeals Panel decision have been superceded by the fact that when the 1989 Act was codified the codification process repealed Texas Civil Statutes, Article 8308-4.63(d), thus removing many of the reasons for a change of treating doctor provided for by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(e) (Rule 126.9(e)). The carrier argues that with this change, Rule 126.9(e) fails to meet the mandate of Section 408.022(c) that the Commission prescribe criteria to be used by the Commission in granting a claimant the authority to change doctors. The carrier essentially argues that the Appeals Panel has no authority to read Rule 126.9(e) more broadly than its terms, citing Rodriguez v. Service Lloyds Ins. Co., 997 S.W.2d 248 (Tex. 1999).

We reject the carrier's argument. The Texas Labor Code specifically states that the codification of the 1989 Act was not intended to substantively change the law. The contents of prior Texas Civil Statutes Art. 8308-4.63(d) have been codified and are found in Section 408.022(c). More importantly, we know of no authority that would prevent the Commission from adopting language by reference in a rule from a prior statute. In this sense, Rule 126.9 is still following the requirement of Section 408.022(c) that the Commission prescribe criteria to be utilized in deciding whether an application to change treating doctors should be approved. The fact it incorporates by reference language from a prior statute does not render the language so incorporated by reference meaningless. The carrier has presented no authority to show that the Commission cannot incorporate by reference the language of any document into the rule, and we are not aware of such a prohibition.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge