

APPEAL NO. 002778

Following a contested case hearing held on October 2, 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 the hearing officer erred in finding an abuse of discretion. The respondent (carrier) replies that the decision of the hearing officer should be affirmed.

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 on _____. On April 13, 2000, the Commission approved the claimant's change of treating doctor from Dr. B to Dr. W. The basis of the request and of the Commission approval was that Dr. B was the company's doctor and the claimant had not had an opportunity to choose a physician. The hearing officer found that the Commission abused its discretion in approving this request because Dr. B was not in fact the treating doctor but a doctor to whom Dr. F, who was the treating doctor, had referred the claimant and because he found that the claimant sought to change to treating doctors because Dr. B had returned him to work. The claimant disputes this.

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

Judy L. Stephens
Appeals Judge