

APPEAL NO. 002868

Following a contested case hearing held on November 10, 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 discretion in approving a change of treating doctors requested by the appellant (claimant). The claimant appeals this decision, arguing that the hearing officer abused his 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.

Section 408.022 sets out the criteria for selecting and changing a treating doctor which are to guide the parties and the Commission. Section 408.022(d) expressly states that a change may not be made to secure either a new impairment rating or a new medical report. See also *Tex. W.C. Comm'n*, 28 TEX. ADMIN. CODE § 126.9(h)(2) (Rule 126.9(h)(2)). A determination to approve or disapprove a change of treating doctors is reviewed under an abuse of discretion standard. *Texas Workers' Compensation Commission Appeal No. 970686*, decided June 4, 1997. There is an abuse of discretion when a decision maker reaches a decision without reference to guiding rules or principles. *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). An abuse of discretion review is based on the facts as they exist at the time the request is acted upon. *Texas Workers' Compensation Commission Appeal No. 000193*, decided March 13, 2000. Generally, this determination is made with regard to what information was before the reviewing authority, specifically in this case, the OAO, including information that would have been in the Commission's files at the time of the requested change. *Texas Workers' Compensation Commission Appeal No. 950252*, decided April 5, 1995. The determination of what the reasons were for the change of treating doctors was a factual matter for the hearing officer to determine. *Texas Workers' Compensation Commission Appeal No. 992921*, decided February 9, 2000.

Applying this standard, we find no reversible error in the decision of the hearing officer which is based upon his factual finding that the claimant changed his treating doctor for the purpose of obtaining a new medical report or rating. While the claimant argues strongly that the reason he changed treating doctors was to obtain physical therapy and there is evidence to support this, it was the province of the hearing officer as the finder of fact to resolve conflicts in the evidence. We cannot say that the hearing officer erred as matter of law in finding that the claimant requested a change of treating doctors for the purpose of obtaining a new medical report or rating. This is so even though another fact finders might have drawn other inferences and reached other conclusions. *Salazar v. Hill*, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge