

APPEAL NO. 010615

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 1, 2001. With respect to the issue before him, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) abused its discretion in approving the request to change treating doctors made by the appellant (claimant). The claimant urges on appeal that this determination is against the great weight and preponderance of the evidence. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant testified at the hearing that he requested to change treating doctors from Dr. G to Dr. L because he did not believe that he was receiving proper care and he had a personality conflict with Dr. G. On the Employee's Request to Change Treating Doctors (TWCC-53) the claimant stated:

I feel it is taking to long to get better. Not happy with the Therapy center and will never go back to them.

The Commission approved this request on October 23, 2000.

The carrier argued that the Commission abused its discretion in approving this change because the actual reason for the claimant's request was not his dissatisfaction with the treatment he was receiving, but rather because he wanted to avoid being returned to work full duty on the scheduled October 24, 2000, office visit.

Section 408.022(c) provides a list of criteria for approving a change of treating doctors. A change to secure a new impairment rating (IR) or medical report is prohibited. Section 408.022(d). *See also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9). 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 and principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The carrier had the burden of proving an abuse of discretion in the approval. See Texas Workers' Compensation Commission Appeal No. 93433, decided July 7, 1993; and Texas Workers' Compensation Commission Appeal No. 941721, decided February 7, 1995 (Unpublished). It introduced into evidence medical reports documenting that the claimant was given medically appropriate care and was progressing as expected. The carrier also introduced into evidence answers to written questions propounded to Dr. G, wherein Dr. G stated that on the claimant's last visit on October 3, 2000, Dr. G informed him that he

was releasing him to work with restrictions and that Dr. G expected to release him to full duty in a few weeks. The claimant testified that he was not aware of an expectation on the part of Dr. G to return him to full duty on October 24, 2000, and that he requested the change for the reasons explained on the TWCC-53.

The hearing officer apparently did not find the claimant to be credible. The hearing officer determined that claimant requested a change of treating doctors in order to obtain a new medical report from Dr. L in order to avoid being returned to work without restrictions. Consequently, he found that the Commission abused its discretion in approving the requested change.

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). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge