

APPEAL NO. 011083
FILED JUNE 28, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 21, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) has not had disability as a result of the compensable injury of _____; that the claimant is not entitled to change treating doctors from Dr. B to Dr. F under Section 408.022; and that the Texas Workers' Compensation Commission (Commission) abused its discretion in approving the claimant's November 3, 2000, request to change treating doctors from Dr. B to Dr. F under Section 408.022(d). The claimant appealed and the respondent (carrier) responded.

DECISION

As reformed herein, the hearing officer's decision is affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that she injured her back and neck pushing a beverage cart. Conflicting evidence was presented to the hearing officer with regard to the disputed issues of disability and change of treating doctor. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer found that the claimant has not had any inability to obtain and retain employment at wages equivalent to her preinjury wage from her injury of _____; that Dr. B provided adequate and appropriate medical care which was similar to the care rendered by Dr. F; that on November 3, 2000, the claimant requested a change of treating doctor for the purpose of securing a new medical report because she knew that her treating doctor, Dr. B, was releasing her to return to work; that the videotapes revealed that the claimant was able to perform many activities which she stated to the doctors she was unable to do and, therefore, her testimony regarding her inability to work and other matters was not credible; and that the Commission abused its discretion in approving the change of treating doctor that was requested on November 3, 2000. The hearing officer concluded that the claimant did not have any disability as a result of her compensable injury of _____, through the date of the CCH; that the claimant is not entitled to change doctors from Dr. B to Dr. F under Section 408.022; and that the Commission abused its discretion in approving the claimant's November 3, 2000, request to change treating doctor from Dr. B to Dr. F under Section 408.022(d). The hearing officer's determinations on the disputed issues are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Finding of Fact No. 6 is reformed to state that Section 408.022(d) provides that "a change of doctor may not be made to secure a new impairment rating or medical report."

The hearing officer's decision and order, as reformed herein, are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge