APPEAL NO. 011097
FILED JUNE 25, 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 22, 2001. The hearing officer determined that the appellant's (claimant) compensable (left ankle) injury does not extend to the low back; that the claimant did not have disability from May 1, 2000 (all dates are 2000 unless otherwise noted) through the date of the CCH; and that the claimant "is not entitled to change doctors from Dr. B to Dr. A". The hearing officer's decision on the extent-of-injury issue has not been appealed and has become final pursuant to Section 410.169.

The claimant appeals the hearing officer's determinations on the change of treating doctor and disability. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a park grounds maintenance man by the self-insured. It is undisputed (stipulated) that the claimant sustained a left ankle injury on _____ when he stepped in a hole dismounting his tractor. The claimant reported the injury to the employer. In dispute is whether the self-insured sent the claimant to (clinic) or whether the claimant elected to go to the clinic. In any event, the claimant was seen at the clinic on _____. X-rays were taken and the claimant was diagnosed with a sprained ankle and taken off work. (The self-insured apparently paid temporary income benefits through April 24.) The claimant apparently was seen again at the clinic on April 6 and was then referred to Dr. B. Dr. B, in a report dated April 10, reviewed the x-rays, prescribed an ankle brace, started the claimant on physical therapy, and placed the claimant on light duty. (The claimant testified that light duty was not available.) Dr. B saw the claimant on a follow-up visit on April 25 at which time Dr. B noted the ankle sprain was resolving and released the claimant to full duty "as of May 1." The claimant saw Dr. A, a chiropractor, on April 26. Dr. A diagnosed "articular cartilage disorder involving ankle and foot" and took the claimant off work.

The claimant filed an Employee's Request to Change Treating Doctors (TWCC-53) dated May 22 requesting a change of treating doctor from Dr. B to Dr. A, giving as his reason for change:

> I was told by the (secretary) to go to [clinic]. I went down there twice & was refer to [Dr. B]. The claims adjuster chose [Dr. B]. Dr. A my treating doctor but the [clinic] is the company doctor. I have chose to come to [Dr. A] for chiropractor care since [Dr. B] does not do anything for me. I don't think I have to do the [rest of the sentence cut off].

The claimant has continued to treat with Dr. A, who has referred the claimant to several other doctors. Dr. JB, who the claimant said was the self-insured's required medical examination doctor, in a report dated August 2, noted "a slight antalgic gait" and had an impression of "Lateral ligament injury, left ankle."

The claimant's first contention on appeal is that Dr. B was the self-insured's ("employer") doctor and therefore the claimant was "allowed to pick his own treating doctor." Whether the self-insured referred the claimant to the clinic, which subsequently referred the claimant to Dr. B, is a factual determination for the hearing officer to resolve. The hearing officer did not make any specific findings on this point but inferentially found that Dr. B was the claimant's first choice of treating doctors and the claimant was seeking a change in treating doctors. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.).

In the alternative, the claimant contends that he did not change doctors to get a new report. Section 408.022(d) provides that a change of treating doctor may not be made to secure a new impairment rating or medical report. The hearing officer found that the claimant's request to change doctors was "to obtain a new medical report to stay off work." While there was contradictory evidence on that point, the hearing officer's factual determination is supported by sufficient evidence.

On the disability issue, the claimant contends that he is unable to work and that Dr. A has him off work. While a number of reports indicate that the claimant has a limp, swelling, or some loss of range of motion, that does not equate to an inability to obtain and retain employment at his preinjury wage. Section 401.011(16).

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 so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge