

APPEAL NO. 011403
FILED AUGUST 6, 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 June 4, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) had the right to change treating doctors, and that the claimant had disability as a result of the compensable injury of _____, beginning on October 4, 2000, and continuing through the date of the CCH. The appellant (carrier) appeals, contending that the hearing officer erred in allowing the claimant to change treating doctors, and that the determination on disability is against the great weight and preponderance of the evidence. There is no response in the file from the claimant.

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.

We have previously held that the standard to be applied in determining whether the Texas Workers' Compensation Commission (Commission) improperly approved a request to change doctors is an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 94857, decided August 17, 1994. In determining whether there is an abuse of discretion, we look to see if the hearing officer acted without reference to any guiding rules or principles. Morrow v. H.E.B., 714 S.W.2d 297 (Tex. 1986); Appeal No. 94857, *supra*.

In the present case, the hearing officer found that the Commission did not abuse its discretion in granting a request for changing doctors for the reasons that the treating doctor had not ordered testing as appropriate medical treatment, and there was evidence that a conflict existed between the claimant and the treating doctor to the extent that the doctor-patient relationship had become impaired. Similarly, in Texas Workers' Compensation Commission Appeal No. 950689, decided June 14, 1995, the Appeals Panel affirmed a determination that it was not an abuse of discretion to approve a change of treating doctor request where the claimant was seeking "better treatment." Thus, we have held that seeking better treatment, i.e. diagnostic tests, is an appropriate reason to change treating doctors.

We are satisfied that the carrier has not shown that the hearing officer abused his authority in determining that the Commission did not exceed its authority in authorizing the change of treating doctors, and we further conclude that the hearing officer's decision is supported by sufficient evidence and is not against the great weight and preponderance of the evidence. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

With respect to the disability determination, we also conclude that the hearing officer's decision is supported by sufficient evidence and is not against the great weight and

preponderance of the evidence. Every doctor that has examined the claimant, including her first treating doctor, subsequent treating doctor, and the doctor who examined her at the behest of the carrier, has stated that the claimant has disability. Whether the claimant had disability was a fact issue for the hearing officer. The hearing officer heard the claimant's testimony, reviewed the medical evidence, and decided what facts the evidence established. The hearing officer determined that the claimant met her burden to prove that she was unable, because of her compensable injury, to obtain and retain employment at wages equivalent to her preinjury wage during the periods testified to by the claimant. Section 401.011(16). The hearing officer was the sole judge of the credibility of the evidence. Accordingly we affirm the Decision and Order of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge