

APPEAL NO. 011723
FILED SEPTEMBER 17, 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 was held on June 20, 2001. The hearing officer determined that the respondent (claimant) chose Dr. W, a chiropractor, as her initial treating doctor and that the claimant is entitled to treat with Dr. W. The appellant (carrier) has appealed, contending that the claimant did not have good cause to change treating doctors and that the review of the Texas Workers' Compensation Commission (Commission) decision to approve a change of treating doctor is limited to the evidence that was available at the time the request was approved. The carrier requests that the Appeals Panel reverse the decision of the hearing officer and render a decision that Dr. S was the claimant's initial choice of treating doctor and that the claimant did not have good cause to change treating doctors from Dr. S to Dr. W. There was no response from the claimant.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____. The claimant testified she initially saw an emergency room physician from (medical center). On September 25, 2000, the claimant saw Dr. S. The claimant testified that Ms. W, who handles workers' compensation for the employer, told her to go to Dr. S and that Ms. W told her she could choose any doctor she wanted to choose but if she wanted to go to a doctor and not have to pay out of her own pocket and then seek reimbursement, she would have to see Dr. S. She testified that after treating with Dr. S for approximately a month, her pain continued to increase and her relationship with Dr. S became unworkable. The claimant testified that she saw Dr. W for the first time on October 24, 2000.

In an Employee's Request to Change Treating Doctors (TWCC-53) dated October 24, 2000, the claimant requested that her treating doctor be changed from Dr. S to Dr. W. The reason stated was: "Dr. was not giving active therapy and I was not getting any better." Section 408.022 provides that an injured worker is entitled to an initial choice of treating doctors and may request to change treating doctors if unsatisfied with the initial choice. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(c)(2) (Rule 126.9(c)(2)) states that a doctor recommended by the employer is not the employee's initial choice of treating doctors "unless the injured employee continues, without good cause as determined by the Commission, to receive treatment from the doctor for a period of more than 60 days[.]" The carrier's argument that the claimant was told she could choose any doctor does not negate the evidence that Dr. S was recommended by the employer. The claimant was treated by Dr. S from September 25 to October 24, when she began seeing Dr. W, a period less than 60 days. The claimant thus was entitled to select Dr. W as her initial treating doctor and we find no abuse of discretion in the Commission's approval of the

request to change treating doctors to Dr. W. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FIRST AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAMES W. FISHER
8111 LBJ FREEWAY
DALLAS, TEXAS 75251.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge