

APPEAL NO. 020007
FILED FEBRUARY 21, 2002

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 November 20, 2001. The hearing officer determined that the respondent (claimant) should be allowed to change treating doctors.

The appellant (carrier) has appealed. It argues that the doctor to whom the change was made exceeds the "75 mile limit" from the claimant's residence. The carrier further argues that the requested change does not meet the requirements of Section 408.022 and the applicable rule and Texas Workers' Compensation Commission (Commission) advisory. There is no response from the claimant.

DECISION

Affirmed.

The issue reported from the benefit review conference (BRC) was whether the claimant should be allowed to change his treating doctor. In this case, his treating doctor lived in one town, and the doctor to whom a change was granted lived a farther distance away in another city.

The claimant did not appear at the CCH; the ombudsman stated that the claimant also had not appeared at either of two BRCs nor had he shown up for any appointment to prepare. The record indicated that the claimant also failed to attend a required medical examination. The representative for the carrier stated that the second treating doctor to whom the change had been granted, a chiropractor, had not submitted many bills. The case was submitted on exhibits from the carrier.

The carrier argued that a change should not be allowed, and that the Commission abused its discretion in granting it because the reasons for seeking a change did not meet the requirements of the statute, rule, or Advisory 2001-01, and also that the doctor was located outside a 75-mile limit. We first note that the Appeals Panel has held that there is no 75-mile limit that controls change of doctors. Texas Workers' Compensation Commission Appeal No. 000015, decided February 22, 2000. Therefore, the fact that the second treating doctor might be located outside a 75-mile radius from the claimant's residence (or whether there might or might not be comparable medical care within this radius) does not control whether such change should, or should not, be approved.

As the Appeals Panel recently clarified in Texas Workers' Compensation Commission Appeal No. 020022, decided February 14, 2002, an issue stated like the one in this case is broader than whether the particular Commission employee who approved the change abused his or her discretion. Evidence may be presented and considered in addition to what was stated on the Employee's Request to Change Treating Doctors

(TWCC-53). The hearing officer must evaluate whether a change should be allowed in accordance with the standards set forth in Section 408.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9). However, Section 408.022(e) states that seeking treatment by another doctor is not considered a "selection" subject to such criteria if the original doctor becomes unavailable or is unable to provide medical care to the claimant.

The TWCC-53 requested a change on March 19, 2001, which was finally granted May 21, 2001. A report by a medical claims administrator for the carrier covering the period from April 3 through May 3, 2001, noted that the claimant was considering that he might see his previous treating doctor again "when he has his new practice up and running." The hearing officer commented in his discussion that this indicated that the treating doctor had become unavailable, and, in fact, at this time the medical records indicate that the claimant was actually being treated by a referral doctor. The hearing officer's inference is reasonable and supports his conclusion of law that a change should be allowed. We will uphold the hearing officer's judgment if it can be sustained on any reasonable basis supported by the evidence. Daylin, Inc. v. Juarez, 766 S.W.2d 347, 352 (Tex. App.- El Paso 1989, writ denied); Texas Workers' Compensation Commission Appeal No. 950791, decided July 3, 1995. We affirm the hearing officer's decision and order.

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

**ROBIN MOUNTAIN
ACE/USA
6600 E. CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Edward Vilano
Appeals Judge