

APPEAL NO. 020343
FILED MARCH 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 17, 2002, the hearing officer resolved the disputed issues by determining that the respondent (claimant) was entitled to change treating doctors pursuant to Section 408.022 and that his compensable injury of _____, includes his low back. The appellant (carrier) has requested our review, challenging the sufficiency of the evidence to support these determinations. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that while burying telephone cable in a customer's backyard, he was chased by the customer's large Rotweiller and at the point where he thought the dog was about to bite his left calf, he jumped into the air and twisted to the right in an evasive measure, landing on his backside. The claimant said that on the very day of the injury his supervisor told him that the owner of the company would not accept a back injury. He said that the carrier accepted his bilateral inguinal hernia injuries, for which he underwent two operations, but refused to accept his claimed low back injury. He also stated that he was diagnosed with a bilateral intervertebral disc injury by Dr. V, who provided him with chiropractic treatment pending his referral to an orthopedic specialist. The claimant said that his hernia surgeon, Dr. R, after initially telling him that his back pain was "wrap around" pain, eventually told him his back pain was not consistent with the hernia injuries he was treating and that the claimant needed to see a back specialist. The claimant indicated that because of the carrier's refusal to accept his low back claim, he was unable to obtain diagnostic testing and treatment by other doctors and that Dr. V was willing to treat his back and take his chances on eventually getting paid. On his Employee's Request to Change Treating Doctors (TWCC-53), requesting approval by the Texas Workers' Compensation Commission (Commission) of his request to change his treating doctor from Dr. R to Dr. V, the claimant stated as follows: "Doctor handles hernias only. Referred me to another doctor for MRI. Does not handle this area. Need to pursue doctor for lower back." The carrier disputed that the claimant had a back injury and contended that treatment of hernias is not Dr. V's area of expertise. Concerning the issue of doctor selection see Section 408.022(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(d) (Rule 126.9(d)).

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We are satisfied that the findings that the claimant injured his low back on _____, while working for the employer and that the Commission did not abuse its discretion in approving the

claimant's request to change treating doctors are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**DONALD GENE SOUTHWELL
10000 N. CENTRAL EXPRESSWAY
DALLAS, TEXAS 75265.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge