

APPEAL NO. 020414  
FILED APRIL 3, 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 was held on January 17, 2002. The hearing officer held that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in approving a change in the respondent's (claimant) treating doctor and he further held that the claimant was entitled to a change of treating doctor. The appellant (self-insured) appeals and argues that once it was determined that the reason for the change was based upon incorrect information, an abuse of discretion by the Commission should have been found. The claimant responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The claimant sustained a knee injury on \_\_\_\_\_. She was treated by her first choice of treating doctor, Dr. R, for nearly a year. A question at some point was raised about the Texas license status of Dr. R. The claimant, on August 27, 2001, filed an Employee's Request to Change Treating Doctors (TWCC-53) to change from Dr. R. At this time, she attached a letter from Dr. R discharging her for treatment to a chiropractor. The Commission denied this request, holding that because Dr. R worked under the supervision of Dr. A, Dr. A was the actual treating doctor. (Dr. A had been listed as the treating doctor on a January 10, 2001, letter appointing a designated doctor.) Dr. A subsequently left the vicinity. A September 6, 2001, request to change from Dr. A was granted on September 12, 2001.

Evidence showed that in fact Dr. R was not fully licensed until September 7, 2001; prior to this, he operated under a post-graduate resident permit. The Commission apparently confirmed this by calling Dr. R's office on January 9, 2001, according to Dispute Resolution Information System notes in evidence. The carrier argued that because the change of treating doctor from Dr. A was granted five days after Dr. R was licensed, Dr. R was a fully licensed doctor on the date the change was approved and therefore no longer arguably under the supervision of Dr. A. The carrier has not shown, however, that Dr. R was on the approved list of doctors maintained by the Commission at the time the change was requested and granted. See Section 408.022(a). We have reviewed the decision and, although the hearing officer did not appear to understand that Dr. R was practicing as a permitted "resident" physician, rather than a licensed doctor, we cannot fault the hearing officer in approving the change of doctor as requested by the claimant.

Dr. R's status as a *permitted* resident (post-graduate) physician is borne out by records in evidence from the Texas State Board of Medical Examiners. The claimant could believe that the Commission had superior information about who the supervising licensed doctor was, and reliance on the Commission's advice about how to properly effectuate a

change of treating doctor was not unreasonable. Although the carrier characterized the concern with Dr. R's status prior to September 7, 2001, as a "fine tooth comb" approach, the difference between a resident in training and a fully licensed physician cannot be dismissed as a matter of semantics. We cannot agree that a change granted under such circumstances should be upended, and payment to the new treating doctor put into limbo, because of the facts developed here. There was no evidence that the claimant sought a change to obtain a new medical report. The hearing officer was not limited to considering a change-of-doctor issue only in terms of whether the Commission abused its discretion. See Texas Workers' Compensation Commission Appeal No. 020022, decided February 14, 2002. We accordingly affirm the decision and order.

The true corporate name of the self-insured/insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**HS  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Edward Vilano  
Appeals Judge