

APPEAL NO. 020775  
FILED APRIL 24, 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 March 1, 2002. The hearing officer determined that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not extend to and include major mental depression nor an injury to the claimant's neck or to her low back; and that the claimant was not entitled to change her treating doctor from Dr. J to Dr. B, pursuant to Section 408.022, because the claimant failed to comply with Texas Workers' Compensation Commission (Commission) rules regarding her request to change her treating doctor. The claimant appeals, arguing that the evidence was sufficient to prove that her compensable injury extended to the claimed body parts and depression. She expressed disagreement with all matters in the decision of the hearing officer that "are damaging to the claimant," but did not otherwise specify her objections to the hearing officer's decision regarding the change of treating doctor. The respondent (carrier) replies, urging affirmance.

DECISION

Affirmed.

Regarding the extent-of-injury issue, the hearing officer did not err in reaching the complained-of determinations. The issue involved questions of fact for the hearing officer to resolve. 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)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations on extent of injury are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant submitted an Employee's Request to Change Treating Doctors (TWCC-53), which was initially denied because the requested doctor had not signed the form. The TWCC-53 was approved by a Commission employee on April 3, 2001, after the requested doctor signed it. The carrier disputed the change of treating doctor on April 17, 2001.

Section 408.022(c) provides a list of criteria for approving a change of treating doctors. A change to secure a new medical report is prohibited. Section 408.022(d). See *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9). A determination to approve or disapprove a change of treating doctors is reviewed under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 970686, decided June 4, 1997. There is an abuse of discretion when a decision maker reaches a decision without reference to guiding rules and principles. Morrow v. H.E.B., Inc., 714

S.W.2d 297 (Tex. 1986). The carrier had the burden of proving an abuse of discretion in the approval. See Texas Workers' Compensation Commission Appeal No. 93433, decided July 7, 1993; and Texas Workers' Compensation Commission Appeal No. 941721, decided February 7, 1995 (Unpublished).

The hearing officer was satisfied that the evidence showed an abuse of discretion in the approval of the claimant's request to change treating doctors because he concluded it was done to secure a new medical report. As noted above, the hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain, supra; In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

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

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge