APPEAL NO. 021325
FILED JUNE 26, 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 May 2, 2002. The hearing officer determined that the claimant was entitled to change treating doctors. He further held that the claimant had disability from November 5, 2001, through the date of the CCH.

The carrier has appealed, arguing that the claimant changed his treating doctor only to obtain a new medical report. It further argues that the evidence shows that the claimant was able to work, as the prior treating doctor gave him a full release. The claimant responds by setting out facts that support the decision.

DECISION

We affirm the hearing officer's decision on all appealed points.

The claimant sustained an undisputed shoulder injury for which he initially sought treatment from a doctor at a clinic referred by the employer. He was referred to a specialist, and assessed to have a shoulder strain. Eventually, after changing doctors, he underwent surgery for a torn rotator cuff, which surgery he testified was approved by the carrier. The hearing officer based his holding on two foundations: that the claimant's change was justified because he was not getting appropriate medical treatment, and that because the doctor he changed from was a referral doctor from the employer's doctor, and that he had not treated with either employer doctor for more than 60 days, he had never made an initial choice of doctor under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §126.9(c)(2) (Rule 126.9(c)(2)) such that an approval of a change was required. (It was this basis upon which the Texas Workers Compensation Commission based its approval in the disputed action.) We find both reasons supported by the record here. The hearing officer obviously believed that the claimant continued to be in pain from his shoulder and had not been told about either a maximum medical improvement or impairment rating certification by the referral doctor, so that, even if a formal request for approval of a change were required, sufficient grounds existed for the change.

Whether the claimant has the inability to obtain and retain employment at wages equivalent to the preinjury average weekly wage (disability) is a question of fact to be resolved by the hearing officer. In this case, he had before him all evidence that the carrier argues in its appeal. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the decision and order.

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

CORPORATE SERVICES COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Judy L. S. Barnes
Appeals Judge

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Michael B. McShane
Appeals Judge