

APPEAL NO. 022245  
FILED OCTOBER 22, 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 August 5, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to change treating doctors from Dr. I, to S. Dr. M. The claimant appeals, arguing that the hearing officer abused her discretion by misapplying the law and inappropriately placing the burden of proof on the claimant; and further arguing that the determination of the hearing officer is not supported by sufficient evidence and is against the great weight and preponderance of the evidence, challenging several findings of fact. The respondent (carrier) responds, contending that the burden of proof was properly placed on the claimant and that there was sufficient evidence to support the determination and findings of the hearing officer.

DECISION

Affirmed.

The issue reported from the benefit review conference was: Is the claimant entitled to change treating doctors to Dr. M pursuant to Section 408.022? 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). Texas Workers' Compensation Commission Appeal No. 020007, decided February 21, 2002. The hearing officer properly applied the applicable law in this case.

Section 408.022 deals with the selection of a doctor and circumstances under which a treating doctor may be changed. See also Rule 126.9. Section 408.022(d) provides that a "change of doctor may not be made to secure a new impairment rating [IR] or medical report." The hearing officer specifically found that the reason for the claimant's request to change treating doctors was "for the purpose of obtaining a new medical report or [IR]." The evidence could give rise to different inferences and the claimant's appeal details the evidence from his point of view. The claimant's appeal challenged several specific findings of fact. The hearing officer is the sole judge of the weight and credibility that is to be given to the evidence. Section 410.165(a). The hearing officer reviewed the record and decided what facts were established. We have reviewed the complained-of determination and the challenged findings. We conclude that the hearing officer's findings and determination are not 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, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Robert W. Potts  
Appeals Judge