

APPEAL NO. 030050
FILED FEBRUARY 21, 2003

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 December 17, 2002. The appellant/cross-respondent (carrier) appeals the hearing officer's determinations that the respondent/cross-appellant (claimant) had disability from May 20 through July 11, 2002; that the claimant had good cause for not attending the required medical examination (RME) on December 11, 2001, and is entitled to temporary income benefits for the period of disability; and that the claimant is entitled to change treating doctors. The claimant appeals the hearing officer's determination that the claimant did not have disability from December 12, 2001, through May 19, 2002. The claimant and the carrier file responses to the other's appeals.

DECISION

Affirmed.

DISABILITY

Whether the claimant had disability concerned factual questions for the hearing officer to resolve. There was conflicting evidence with respect to disability. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We have reviewed the matters complained of on appeal and conclude that the hearing officer's decision is supported by sufficient evidence.

REQUIRED MEDICAL EXAMINATION

The claimant testified that he did not receive notice of the RME examination scheduled for December 11, 2001. In that regard the hearing officer stated:

Claimant alleges that he did not have notice of the appointment. A copy of the letter which is in evidence shows that it was sent to an incorrect address....Therefore Claimant had good cause to not attend the RME on December 11, 2001.

The evidence shows that the carrier sent the notice of the RME to the wrong address and the hearing officer was persuaded that the claimant was not aware of the RME appointment.

Whether good cause exists is a matter left up to the discretion of the hearing officer, and the determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 002816, decided January 17, 2001, citing Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have held that the appropriate test for good cause is that of ordinary prudence; that is, the degree of diligence an ordinarily prudent person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. In view of the evidence presented, we cannot conclude that the hearing officer abused his discretion in determining that the claimant had good cause for failing to attend the RME on December 11, 2001. Accordingly, we affirm the hearing officer's determination that the claimant had good cause for not attending the RME on December 11, 2001.

CHANGE OF TREATING DOCTOR

Regarding the change of treating doctor issue, we review that matter on an abuse-of-discretion standard. There is an abuse of discretion when a decision maker reaches a decision without reference to guiding rules or principles (Morrow, *supra*). The hearing officer made a factual determination that the claimant requested a change of treating doctor because the "claimant became dissatisfied with the medical care provided by [his treating doctor] and the referral doctor... and did not believe that their treatment was the proper way to obtain maximum recovery from the compensable injury." We cannot say that the hearing officer abused his discretion.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Roy L. Warren
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge