

APPEAL NO. 030316
FILED MARCH 27, 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 (CCH) was held on January 14, 2003. The hearing officer determined that the appellant's (claimant) compensable injury does not extend to and include a mild broad based disc bulge at L4-5, mild foraminal stenosis below the level of the existing nerve roots, and mild bilateral facet arthropathy at L5-S1 (referred to as the claimant's current assessment); that the claimant had disability from June 17 through July 11, 2002, but does not have disability from July 12, 2002, through the date of the CCH; and that the claimant is not entitled to change treating doctors to Dr. M, a chiropractor.

The claimant has appealed all the determinations, asserting that medical evidence and an MRI show that his compensable injury includes his current assessment; that he has disability because no doctor has released him to return to work; and that he was entitled to change treating doctors because he "was not happy with [his former treating doctor's] demeanor and [he] did not want to keep taking pills." The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to his lumbar spine in the form of a sprain/strain on _____. It is undisputed that the claimant had also sustained a knee and low back injury in 1993 and in evidence was an MRI report of November 11, 1993. After his compensable lifting injury of _____, the claimant had another MRI on July 11, 2002, which noted the claimant's current assessment. In dispute is whether the 1993 lumbar injury had resolved and the frequency of the claimant's treatments between 1993 and _____. The claimant's treating doctor for the 1993 injury was Dr. B. After the claimant's _____, injury he sought treatment with Dr. B but because Dr. B was temporarily unavailable the claimant saw Dr. K, a medical doctor in the same practice as Dr. B. Dr. K took the claimant off work and prescribed physical therapy but because of a mix-up the claimant did not go to that therapy. There was also testimony that Dr. K told the claimant that he was prescribing two weeks physical therapy after which he would be released back to work. The claimant's last visit to Dr. K was apparently June 17, 2002. The claimant sought a change of treating doctor on an Employee's Request to Change Treating Doctors (TWCC-53) dated June 17, 2002, giving as a reason for changing doctors "[Dr. K] treats with medication and I would like to be treated with physical therapy." The Texas Workers' Compensation Commission (Commission) approved the change on July 9, 2002. A second MRI was performed on July 11, 2002. The 1993 MRI had indicated a disc herniation where the 2002 MRI only showed a "mild broad-based disc bulge" at the same level.

The hearing officer had both MRI reports available and there was conflicting evidence whether the accepted lumbar strain/sprain included the mild broad based disc bulge at L4-5, mild foraminal stenosis below the level of the existing nerve roots, and mild bilateral facet arthropathy at L5-S1. The hearing officer is the sole judge of the weight and credibility of the evidence and this is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer's decision on this issue is supported by the evidence.

Regarding disability the hearing officer commented:

Claimant underwent the MRI on July 11, 2002. However, the medical records were insufficient to establish on-going disability after July 12, 2002 and fail to state why the Claimant continues to remain off work as a result of a sprain/strain to his lumbar spine and not because of the degenerative problems to the lower back (as revealed by the MRI of July, 2002).

We affirm the hearing officer's determinations on this issue as being supported by the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant, at the CCH, advanced a number of reasons why he wanted to change treating doctors. 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 or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer, in her Statement of the Evidence, notes several of the reasons the claimant advanced for wanting to change treating doctors including that the claimant said he wanted physical therapy, which had been prescribed by Dr. K and that Dr. M in fact had referred the claimant back to the facility where Dr. K works. The hearing officer concluded that the TWCC-53 did not state an appropriate reason to allow a change of treating physician and the "approval by the Commission was improper." We cannot say that the hearing officer abused her discretion and that her decision was without reference to guiding rules and principles. Morrow, supra.

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. Accordingly the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge