

APPEAL NO. 032879
FILED DECEMBER 17, 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 October 6, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not allowed to change treating doctors from Dr. W to Dr. M. The claimant appeals, contending that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (carrier) asserts that sufficient evidence supports the hearing officer's decision.

DECISION

Reversed and rendered.

The claimant testified that she fell at work on _____, injuring her back and neck. The parties stipulated that the claimant sustained a compensable cervical and lumbar injury on _____. The claimant began treating with Dr. W, a chiropractor, on January 28, 2003. Dr. W's progress notes reflect that the claimant complained of back and neck pain due to her fall at work and that he provided therapy for the claimant's neck and lower back. Dr. W released the claimant to return to work without restrictions on March 24, 2003. In a report of Medical Evaluation (TWCC-69) dated April 8, 2003, Dr. W certified that the claimant reached maximum medical improvement (MMI) on that date with a zero percent impairment rating (IR), and his report reflects that he evaluated the claimant's cervicothoracic spine and thoracolumbar spine.

However, in a letter dated July 14, 2003, Dr. W wrote that on April 8, 2003, he had released the claimant from his care for the claimant's lumbar spine injury, and that his care and the IR was strictly for the injury to the lower back and did not address any other area of complaint. In an undated letter, Dr. W wrote that the MMI/IR evaluation was performed for the claimant's lumbar spine; that the claimant received treatment for her lumbar spine injury; that due to the fact that no impairment was given, no further care was deemed necessary for the claimant's lower back; that at no time was care refused; that in his opinion, further care of the claimant's lower back was not medically necessary; and that the claimant was released from his care on April 8, 2003.

In answering a deposition on written questions, Dr. W wrote that when he released the claimant at MMI with a zero percent IR, "as related to the injury to her lower back," it was assumed that with a zero percent IR, no further treatment was needed, but if the lower back injury is reagravated, it would have to be addressed at that time; and that he is able and willing to treat the claimant for her "lower back" if the situation is necessary and is related to the _____, injury. Dr. W provided an affirmative response to the question of whether he believed that he provided appropriate medical care to allow the claimant to reach MMI. He provided a negative

response to the question of whether he was aware of any conflict between himself and the claimant to the extent that the doctor-patient relationship was jeopardized or impaired.

The claimant testified that when Dr. W released her from his care in April 2003, and told her that he could not treat her any longer, she still had neck pain and did not feel that her neck injury was healed, and that is why she went to Dr. M, who is also a chiropractor. In an Employee's Request to Change Treating Doctors (TWCC-53), signed by the claimant on May 16, 2003, the claimant requested to change treating doctors from Dr. W to Dr. M, and stated as the reason for the request that her treating doctor had released her from his care. The claimant's request to change treating doctors was approved by a Texas Workers' Compensation Commission (Commission) official actions officer on May 19, 2003. The claimant said that Dr. M has been treating her for her neck pain and that she is feeling better as a result of that treatment.

In September 2003, Dr. B examined the claimant, and he opined that the claimant's injury of _____, was limited to the claimant's cervical and lumbar regions (he diagnosed a cervical strain and a lumbosacral strain), and that the claimant had no impairment of the whole person. Dr. B did not opine on whether the claimant was at MMI for her injury of _____.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §126.9(e) (Rule 126.9(e)) provides that reasons for approving a change in treating doctor include, but are not limited to: (1) the reasons listed in Texas Civil Statutes, Article 8308-4.63(d) (codified as Section 408.022(c) of the Texas Labor Code); and (2) the selected doctor chooses not to be responsible for coordinating the injured employee's health care. The claimant contended at the CCH that the hearing officer should uphold the Commission's approval of the change of treating doctor because: (1) Dr. W was not providing appropriate medical care for the claimant to reach MMI with regard to her cervical injury (see Section 408.022(c)(3)); and (2) Dr. W chose not to be responsible for the claimant's health care (see Rule 126.9(e)(2)). In separate findings of fact, the hearing officer found that there was no probative evidence to establish any of the reasons set forth in Section 408.022(c) or Rule 126.9(e) for approving a change of treating doctor from Dr. W to Dr. M, and he concluded that the claimant is not allowed to make the requested change.

Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Texas Workers' Compensation Commission Appeal No. 031052, decided June 19, 2003. The claimant asserts on appeal that if the treating doctor refuses to treat and rate all of the injured body parts, and the hearing officer denies the request to change treating doctors to a doctor who is willing to treat all the injured body parts, the claimant cannot get treatment for her compensable injury. The claimant asserts that since Dr. W will not treat all of her injured body parts, specifically her cervical injury, and since the hearing officer will not allow her to change treating doctors, the hearing officer's

decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. We agree with the claimant's contention.

It is undisputed that the claimant sustained a compensable cervical and lumbar injury. While it appears that Dr. W did provide therapy for the claimant's neck and lower back, and that he did reference the claimant's cervicothoracic spine and thoracolumbar spine in his TWCC-69, his letters and his answers to questions on written deposition reflect that his MMI and IR determinations, his release of the claimant from his care, and his willingness to continue to treat the claimant are all in relation to the claimant's lumbar injury only, and did not address the claimant's undisputed compensable cervical injury. Thus, the hearing officer's decision to not approve the change of treating doctor effectively leaves the claimant without further treatment for the compensable cervical injury and without appropriate medical care to reach MMI for her compensable injury, which includes her cervical injury. See Section 408.022(c)(3)). Consequently, we conclude that the hearing officer's decision to not allow the claimant to change treating doctors from Dr. W to Dr. M is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. We reverse the hearing officer's decision and we render a new decision that the claimant is allowed to change treating doctors from Dr. W to Dr. M. We note that our decision in this case is not a decision on whether or not the claimant has reached MMI for her compensable injury.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge