

APPEAL NO. 033063
FILED JANUARY 6, 2004

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 23, 2003. The hearing officer determined that the respondent (claimant) has had disability due to her _____, compensable injury from June 24, 2003, to the date of the CCH, and that the claimant is entitled to change treating doctors to doctor Dr. W under Section 408.022. The appellant (carrier) appealed both determinations and the claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant was taken to the company doctor, Dr. G, on _____. Dr. G's records reflect that he initially released the claimant to restricted duty on _____, released the claimant to full duty on January 13, 2003, and restricted the claimant from returning to work on January 20, 2003. Dr. G referred the claimant to Dr. D. Dr. D examined the claimant on January 24, 2003, and diagnosed "multiple strains/sprains involving the neck, lower back, right thigh and possibly the left thigh as well as right knee contusion." Dr. D gave the claimant a full-duty release. The claimant subsequently changed treating doctors to Dr. W, and he took the claimant off work on June 24, 2003, with an initial impression of chondromalacia patella of the right knee, impingement syndrome bilaterally of the shoulder, and low back pain. The claimant testified that she changed treating doctors to Dr. W because her condition was not improving. The hearing officer determined that the claimant has had disability from June 24, 2003, through the date of the hearing, and that she is entitled to change treating doctors to Dr. W. There was conflicting evidence as to why the claimant was not working after June 24, 2003.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision on the disability issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Regarding the change in treating doctors, in Texas Workers' Compensation Commission Appeal No. 020022, decided February 14, 2002, the Appeals Panel stated that the issue was "broader than whether a particular [Texas Workers' Compensation Commission (Commission)] employee who approved the change abused his or her discretion." The hearing officer was to 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) and the hearing officer is not limited to considering a change in treating doctors only in terms of whether the Commission abused its discretion. In the instant case, the hearing officer applied Section 408.022 to the facts and concluded that the claimant's testimony of lack of improvement of her knee condition was credible. We hold that the hearing officer properly applied the applicable law and that the claimant had provided a proper foundation for the request to change of treating doctor. See *a/so* Texas Workers' Compensation Commission Appeal No. 030623, decided April 28, 2003.

The hearing officer's decision and order are affirmed.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge