APPEAL NO. 041010
FILED JUNE 24, 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 April 1, 2004 The hearing officer determined that: (1) the respondent (claimant) is entitled to change treating doctors from Dr. M to Dr. R; (2) the claimant's compensable injury of _____, includes the right wrist and degenerative disc disease at L5-S1; and (3) the claimant had disability beginning April 15 and ending September 1, 2003. The appellant (carrier) appealed the hearing officer's change of treating doctors and extent-of-injury determinations based on sufficiency of the evidence grounds. The appeal file does not contain a response from the claimant. The hearing officer's disability determination was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant testified that he sustained an injury to his back and right wrist when he picked up a tote/tub on _____. The claimant testified that the company nurse saw him for his injuries and that the nurse made an appointment for the claimant to be seen by a doctor. The company nurse testified that the claimant did not choose a doctor from the phone book, but rather she chose a doctor based on her personal knowledge of doctors who took workers' compensation cases. The company nurse testified that she assisted the claimant in scheduling an appointment with Dr. M that same day. The claimant testified that he saw Dr. M and that Dr. M did not exam him. The claimant testified that he changed treating doctors from Dr. M to Dr. R because he was not satisfied with Dr. M's medical treatment of his injuries.

The hearing officer did not err in determining that the claimant is entitled to change treating doctors from Dr. M to Dr. R. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(c)(1) through (3) (Rule 126.9(c)(1) through (3)) specify three circumstances in which the first doctor providing health care does not constitute the initial choice of treating doctor. Rule 126.9(c)(2) provides that a doctor recommended by the carrier or employer will not become the initial treating doctor, unless the injured employee continues, without good cause as determined by the Texas Workers' Compensation Commission, to receive treatment from the doctor for a period of more than 60 days. Rule 126.9(c)(3) provides that a doctor providing emergency care will not become the initial treating doctor unless the injured employee receives treatment from the doctor for other than follow-up care related to the emergency treatment. In the instant case, the hearing officer determined that Rule 126.9(c)(2) and (3) applied to the facts of this case. The hearing officer commented that although the company nurse testified that the claimant chose Dr. M, "it seems clear that she was making recommendations" and that the company nurse had admitted that she arranged medical

appointments for other employees to be seen by Dr. M. Therefore, the hearing officer found that Dr. M was a doctor recommended by the employer. Additionally, the hearing officer commented that the "referral was for a medical visit that same day, within four hours of the injury, and it was considered urgent for Claimant to see a doctor that day by [the company nurse], such that he could not wait for the orthopedic surgeons to be back in their offices." Accordingly, the hearing officer found that Dr. M was a doctor providing emergency treatment and the claimant did not continue treatment with his office except for follow-up to the emergency treatment. There was sufficient evidence from which the hearing officer could determine that Dr. M was not the claimant's initial choice of treating doctor because the employer recommended Dr. M to the claimant and Dr. M provided emergency treatment. We conclude that the hearing officer's determination that the claimant is entitled to change treating doctors from Dr. M to Dr. R is 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).

The hearing officer did not err in determining that the claimant's compensable injury of _____, includes the right wrist and degenerative disc disease at L5-S1. The issue of extent of injury is a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence, we conclude that the hearing officer's extent-of-injury determination 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, *supra*.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** 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.

_____
Veronica L. Ruberto
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge