APPEAL NO. 990121

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 December 10, 1998. The issues before the hearing officer involved whether the appellant, who is the claimant, sustained an injury to her hip on _____, when she also injured her right arm; whether she had disability; whether she was entitled to reimbursement for some medical transportation expenses; and whether the respondent (carrier) was relieved of liability for any treatment provided by her treating doctor.

The hearing officer found that the claimant did not injure her hip on _____; that her right arm and hand injury on that date were not serious enough to cause disability, and any inability to work was from other causes; that she was not entitled to medical reimbursement; and that the carrier was discharged from liability for payment to her treating doctor prior to August 28, 1998, due to her failure to comply with Tex. W.C. Comm'n, 28 ADMIN. CODE § 126.9 (Rule 126.9)

The claimant appeals all adverse determinations, arguing that the great weight and preponderance of the evidence support a decision in claimant's favor. The carrier asks that the decision be affirmed.

DECISION

Affirmed as to finding that there was no hip injury or disability therefrom that medical reimbursement is not due. Reversed and rendered as to determination that the carrier was not liable for treatment by Dr. M prior to the date a change of doctor form was filed.

Claimant was a school teacher at a middle school operated by the employer, who is also the self-insured in this case, when she was injured breaking up an altercation between two students on _____. She said she injured her right arm and hip. She completed the school year working in pain. She indicated that she had two prior work related injuries; an injury in 1994 involved her right hip, and in 1997, she injured her back.

The claimant said that she went to her primary care doctor for her HMO, Dr. F on June 6, 1998, which was the first date she sought treatment for her _____ injury. She was not treated by Dr. F on this date; he stated that he would refer her for her workers' compensation injury to Dr. B, because he was "already" treating her. He made an appointment for her with Dr. B for June 29, and gave her a pre-printed off-work slip (filling in only the dates she was to be off work) which covered the period of time until her appointment with Dr. B. However, the facts showed that Dr. B was in fact a designated doctor on one of her prior claims. Claimant said that when she arrived at Dr. B's office for the scheduled appointment, they had caught this and said they could not treat her. Claimant said she was referred by her employer's risk management office to Dr. M. A note on an insurance approval form from Dr. M's files stated that his office made contact with the adjuster, Ms. C, who approved treatment for claimant's hip and further stated that an

Employee's Request to Change Treating Doctors (TWCC-53) would not be required. Dr. M, in an October 28, 1998, letter, verified that the adjuster gave the advice to his office that was recorded in his file notes. Dr. F wrote in a letter dated October 19, 1998, that he was not the treating doctor and had referred her for treatment to Dr. B. On July 21, 1998, claimant filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) stating that Dr. M was her treating doctor, and claiming right arm and shoulder pain. On August 27, 1998, the claimant filed a TWCC-53 which recited the history of her contacts with Dr. F and Dr. B, and stated that the adjuster had okayed Dr. M as her treating doctor but was "now" saying that he was not the treating doctor. She testified that she filed this form when she started getting denial letters from Ms. C. She could not understand this because Ms. C was also the person who had referred her to Dr. M. It was also brought out at the CCH that the ombudsman insisted that claimant file the TWCC-53 form.

The claimant said she was not scheduled to teach summer school in summer 1998, although in the past she had worked during the summer. The records submitted by the carrier show that the claimant was treated by Dr. F from May through August 1998 for diabetes. Dr. F completed a leave of absence form for the claimant to take her off work for diabetes from August 3 through September 1, 1998. Dr. M's initial treatment record on July 1, 1998, stated that claimant had a hip contusion. (The carrier asserted that this was added after the fact by Dr. M to her medical record). She said she did not receive payment from the disability carrier, although this was pending. Dr. M wrote on October 28, 1998, that claimant had been disabled from working since July 1, 1998, due to injuries to her right hip, right arm, and hand.

On the matter of mileage, the claimant stated that she received route advisories from the carrier (taken from the Internet) from her home to medical treatment. The routes selected by the carrier were all under 20 miles one way. She did not always drive these routes, however, and took her own routes, in part to combine various visits. Claimant contended her own routes amounted to more than 20 miles one way.

We affirm the hearing officer's determinations that the claimant did not injure her hip, and that she did not have disability, and that her medical mileage was not reimbursable. These determinations are resolutions of conflicting evidence. The hearing officer could note that she continued to work after her injury until the end of the school year, and the evidence also proved that she was taken off work by Dr. F in August due to her diabetes.

However, we reverse the determination that the carrier is relieved of liability for treatment by Dr. M. Although the hearing officer states that the claimant did not comply with Rule 126.9, we do not agree that there are sufficient facts to support the implied finding that it was necessary for the claimant to seek approval to "change" her treating doctor, as Dr. M was her initial selection. Rule 126.9(c) states that the first doctor to render "health care" to an injured worker is the first choice of treating doctor. There is insufficient evidence to establish that Dr. F rendered "health care," as defined in Section 401.011(19). We also note that Section 408.022(c)(4)(C) states that an alternate choice of doctor is not

made when the initial doctor has become unavailable or unable to provide medical care. Dr. F in this case did not provide more than a referral to the claimant to Dr. B. It was undisputed that she neither saw nor was treated by Dr. B. With no earlier treating doctor established by the evidence, there is no reason indicated for filing a "change" of treating doctor in a TWCC-53. (Even if there had been a need for such form, it appears that the TWCC-53 form was not filed earlier due to reliance on the adjuster's statement that it would not be needed to obtain payment for treatment; following the direction of the carrier in this regard does not, in our opinion, constitute a "failure" by a claimant to follow the rules that would result in the carrier from being relieved from liability for payment). Accordingly, we reverse for the reasons stated above and render the decision that Dr. M was the claimant's initial choice of treating doctor, and that no change of doctor was required. Carrier is not discharged from liability for medical benefits. In all respects, we affirm the decision and order.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Philip F. O'Neill
Appeals Judge