

APPEAL NO. 001422

On April 28, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent's (claimant) compensable injury of _____, extends to include a concussion and a neck injury and that the claimant is not entitled to change her treating doctor under Section 408.022. The claimant requests that the hearing officer's decision on the issue of change of treating doctor be reversed and that a decision on that issue be rendered in her favor. The respondent/cross-appellant (carrier) requests that the hearing officer's decision on the issue of extent of injury be reversed and that a decision on that issue be rendered in its favor.

DECISION

Affirmed.

The claimant and the claimant's attorney were given written notice of the setting of the CCH; the claimant's attorney's request for a continuance was denied; and the claimant and the claimant's attorney did not appear at the CCH. The carrier appeared at the CCH and its exhibits were admitted into evidence. Following the CCH, the hearing officer sent a letter to the claimant and the claimant's attorney stating that they had 10 days to request that the CCH be reconvened to allow them to show good cause for their failure to attend the CCH and to permit the claimant to present evidence on the disputed issues. The hearing officer states in her decision that neither the claimant nor the claimant's attorney had contacted the Texas Workers' Compensation Commission with regard to the show cause letter as of the date of the hearing officer's decision, May 31, 2000.

It is undisputed that the claimant sustained a compensable injury on _____, when she struck the index finger of her left hand with a hammer. Dr. P reviewed the claimant's medical records at the request of the carrier and he noted that the examining physician at the hospital where the claimant was taken on _____ for her finger injury reported that during an examination the claimant fainted and fell and sustained a laceration to her forehead that required sutures and that the claimant again fainted while she was in a wheelchair on the way to being x-rayed. Dr. P further noted that the claimant was subsequently diagnosed with a concussion and neck injury and that Dr. D reported that the claimant's fall at the hospital was due to pain and was related to the finger injury. Dr. P opined that the claimant's diagnoses should be limited to her finger and potentially a cervical sprain/strain and healed laceration.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In Western Casualty and Surety Company v. Gonzales, 518 S.W.2d 524, 526 (Tex. 1975), the court noted that the site of the trauma and its immediate effects are not necessarily determinative of the nature and extent of the compensable injury and that the full consequences of the original injury, together with the effects of its treatment,

upon the general health and body of the worker are to be considered. We conclude that the hearing officer's decision that the compensable injury of _____, extends to include a concussion and neck injury is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

Reasons for approving a change of treating doctor include, but are not limited to, the reasons listed in 408.022(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(e) (Rule 126.9(e)). Section 408.022(d) provides that a change of doctor may not be made to secure a new impairment rating (IR) or medical report.

Dr. A was the claimant's initial treating doctor and he certified that the claimant reached maximum medical improvement on July 8, 1999, with a zero percent IR and released the claimant to full-duty work. Subsequently, the claimant began seeing Dr. TP, who took the claimant off work in August 1999. On September 21, 1999, the claimant requested approval to change treating doctors to Dr. TP, which was approved by an official actions officer on October 1, 1999. The claimant stated in her request to change doctors that the reason for the change was that she is not satisfied with her current doctor's treatment. The hearing officer found that the medical evidence presented was insufficient to show that treatment by Dr. A was inappropriate or that a conflict exists between the claimant and Dr. A to the extent that the doctor-patient relationship is jeopardized or impaired or that the claimant is otherwise entitled to change treating doctors based on criteria set forth in Section 408.022 and Rule 126.9. The hearing officer decided that the claimant is not entitled to change her treating doctor. We conclude that the hearing officer did not abuse her discretion in ruling against the claimant on the issue of change of treating doctor, that her decision is supported by sufficient evidence, and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Gary L. Kilgore
Appeals Judge