APPEAL NO. 020867
FILED MAY 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 5, 2002. With respect to the single issue before him, the hearing officer determined that the respondent (carrier) is relieved of liability for health care furnished by Dr. K or at the direction of Dr. K pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(h)(2) (Rule 126.9(h)(2)) because the appellant (claimant) failed to comply with the rules regarding a change in treating doctor in changing to Dr. K. In his appeal, the claimant argues that the hearing officer erred in determining that the first doctor who provided health care to him following his compensable injury, Dr. L, became his initial choice of treating doctor. The claimant maintains that the exceptions in Rule 126.9(c)(2) and (c)(3) apply such that Dr. L did not constitute an initial choice of treating doctor and that, accordingly, Dr. K was his initial choice of treating doctor. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____. The claimant testified that on _____, he was working as a custodian for a school. He stated that as he was moving a file cabinet, it fell on his left hand, smashing the middle and ring fingers. The claimant stated that he wrapped his hand to control the bleeding and immediately reported his injury to Ms. L, the school secretary. The claimant testified that Ms. L completed an accident report and told him to seek medical treatment at (clinic). He further stated that he went to the clinic recommended by the employer and was treated by Dr. L, who x-rayed his left hand, cleaned up the wound, and sutured the cut on his left middle finger. The records from the clinic demonstrate that the claimant had a "laceration of the left 3rd finger and crush fracture of the left 3rd finger tip." The claimant stated that he returned for follow-up care with Dr. L on August 10, 2001, and had to wait nearly four hours in the waiting room before being seen. The claimant stated that because of his dissatisfaction with the service he received at the clinic, he began treating with Dr. K, a chiropractor with whom he had treated for a prior back injury. Dr. K referred the claimant to Dr. V, a hand surgeon, who, in a report dated August 16, 2001, noted that the claimant had a laceration in his left middle finger "where multiple sutures are present" and a fracture of the distal phalange of the left middle finger. Ms. L denied that she told the claimant to seek treatment at the clinic. She maintained that she told him that he could go to the doctor of his choice but that the claimant asked her where he could go for treatment. Ms. L testified that she did not know where to send him so she called the school nurse to determine the closest place for the claimant to receive treatment. Ms. L stated that she wanted to find the closest place because the claimant was "bleeding profusely" and she believed it was an "emergency situation."

The parties stipulated that the claimant did not file an Employee's Request to Change Treating Doctors (TWCC-53) to change from Dr. L to Dr. K. Thus, the resolution of this case is dependent upon whether Dr. L became the claimant's initial choice of treating doctor. That question is controlled by Rule 126.9(c), which provides, as follows:

> The first doctor who provides health care to an injured employee shall be known as the injured employee's initial choice of treating doctor. The following do not constitute an initial choice of treating doctor:
>
> (1) a doctor salaried by the employer;
>
> (2) a doctor recommended by the carrier or employer, unless the injured employee continues, without good cause as determined by the commission, to receive treatment from the doctor for a period of more than 60 days; or
>
> (3) any doctor providing emergency care unless the injured employee receives treatment from the doctor for other than follow-up care related to the emergency treatment.

Rule 126.9(h)(2) provides that the Commission may relieve the carrier of liability for health care furnished by a doctor or at the direction of the doctor if "the employee failed to comply with commission rules regarding a change in treating doctor."

The claimant argues that both subsections (c)(2) and (c)(3) of Rule 126.9 apply in this instance and that, as a result, Dr. L did not become his initial treating doctor. There was conflicting evidence on the issue of whether Ms. L told the claimant to seek treatment at the clinic. The claimant so testified; however, Ms. L maintained that she told the claimant he could seek treatment from the doctor of his choice and advised him of the clinic only after the claimant asked for her assistance in finding a doctor. The hearing officer is the sole judge of the weight and credibility of the evidence under Section 410.165(a). He was acting within his province as the fact finder in resolving the conflict in the evidence against the claimant and in determining that the employer did not recommend Dr. L within the meaning of Rule 126.9(c)(2). That determination is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to disturb it on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant alternatively argued that Dr. L did not become his initial treating doctor under Rule 126.9(c)(3) because the treatment provided by Dr. L was emergency care. The hearing officer determined that the claimant's "initial treatment was urgent care but was not emergency care." Thus, he further determined that the exception of Rule 126.9(c)(3) did not apply herein. The basis for the hearing officer's distinction between "urgent care" and "emergency care" is unclear. The term "emergency" is defined in Dorland's Illustrated Medical Dictionary 28th Ed. as "an unlooked for or sudden occasion; an accident; an urgent or pressing need." The undisputed evidence in this case demonstrates that when the file cabinet fell on the claimant's left hand, it caused a crush fracture of the left middle finger

tip and a laceration on that same finger, which required multiple sutures. The claimant and Ms. L both testified that he was bleeding heavily. Indeed, Ms. L stated that the claimant was bleeding "profusely" and that she called the nurse to find the closest location where the claimant could seek medical treatment because of the nature of the bleeding. Ms. L even characterized the situation as an "emergency." Under these facts, the hearing officer's determination that Dr. L did not provide emergency care to the claimant, within the meaning of Rule 126.9, is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. Accordingly, we reverse that determination and render a new determination that Dr. L provided emergency care to the claimant on the date of his injury. As such, Dr. L did not become the claimant's initial choice of treating doctor pursuant to Rule 126.9(c)(3). Rather, Dr. K was the claimant's initial choice of treating doctor and the claimant was not required to comply with the change of doctor requirements in order to begin treating with Dr. K. Thus, the hearing officer erred in relieving the carrier of liability for medical treatment provided by Dr. K and at the direction of Dr. K pursuant to Rule 126.9(h)(2).

The hearing officer's decision that the carrier is relieved of liability for medical treatment provided by Dr. K and at the direction of Dr. K is reversed and a new decision rendered that the carrier is liable for reasonable and necessary medical treatment provided by Dr. K and at his direction because Dr. K is the claimant's initial choice of treating doctor. The carrier is ordered to pay benefits in accordance with this decision, the 1989 Act, and the Commission's rules.

The true corporate name of the insurance carrier is **NORTH AMERICAN SPECIALTY INSURANCE 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.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge