APPEAL NO. 93239

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1993). On March 3, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that respondent (claimant) should be reimbursed for his travel expense for medical care between October 3, 1991 and November 12, 1992. Appellant (carrier) asserts that the finding that it was reasonably necessary for claimant to travel from M to A to see a doctor was against the great weight and preponderance of the evidence. Claimant did not reply.

DECISION

Finding that the decision of the hearing officer is supported by sufficient evidence of record, we affirm.

Claimant worked for Employer in (city A) on January 10, 1991, when he was attempting to move a large tool box in a truck. He fell out of the truck and broke his neck. He also sustained other injuries including to his knee. His family resided in (city), Texas, and he decided to return to that city to live to get the long term support he would need because of his injuries. There was no dispute as to the injury or as to the extent of its impact on the claimant. The Appeals Panel reviewed a similar hearing addressing reimbursement for travel expense in this case; in that instance, the hearing officer had ruled that travel expense questions were adjudicated by the Medical Review Division; Texas Workers' Compensation Commission Appeal No. 92139, dated May 18, 1992, affirmed that prior decision. Since that time, Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6) was amended on December 1, 1992, to provide that disputes regarding travel expense would be resolved through the dispute resolution process to the Appeals Panel. That rule provides in part, "[w]hen it becomes reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary care for the injured employee's compensable injury, the reasonable cost shall be paid by the insurance carrier."

Claimant testified that his employer strongly urged him to use Dr. P a neurosurgeon in city A, for surgery of his neck even though employer knew claimant intended to move to (city). (*See* Appeal No. 92139, *supra*.) The thrust of claimant's testimony on this point was that his employer believed that he would get the best care for his broken neck from this neurosurgeon. Claimant had that surgery on April 10, 1991, which date was selected by the surgeon. Thereafter Dr. P moved from Amarillo and is now with the University of Virginia Medical School, but claimant continued to be followed by Dr. P's associate, (Dr. Pa).

Claimant further testified that he checked with the limited number of neurosurgeons in the (city) area and none would take over his case. One felt he was not qualified to do so and others did not wish to take a case in which another doctor had done the initial surgery. Claimant also stated that the adjuster for the carrier tried to find follow-up care for him too, but he was also unsuccessful. Claimant did find an orthopedic surgeon who will treat his

knee once the treatment of the neck is complete. Claimant appeared credible in saying that he wanted to get further treatment in Midland so he would not have to make the 500 mile round trip; he described the trips as requiring a driver to drive him, that stops must be made each 50 miles for him to walk, that he arrives at Amarillo one day and rests overnight before seeing the doctor the next day, and then he is driven back to Midland with the same stops.

Claimant was asked about treatment in metropolitan areas other than the (city) area. At first he opined that there were not too many metropolitan areas out that way. He did agree that Lubbock may have a neurosurgeon and stated that he had not looked in that city, which would be closer to him than (city).

Carrier called no witnesses and introduced no exhibits. Claimant introduced a letter that listed the trips he had made to (city) for medical care. Carrier argued at the hearing that claimant had not shown sufficient effort to find follow-up care closer (i.e., L) to his present residence so that his travel to city was not reasonably necessary. Without stating whether a claimant should be required to seek care in a city between where he lives and where he receives care, we note that no evidence was provided that carrier suggested to claimant prior to this hearing that he seek care in city, Texas.

The facts of this case show that claimant had a very serious injury requiring complex treatment. The distance between his residence after the injury and his medical care was dictated by his need to receive care from his family. He fully cooperated with the carrier in seeking follow-up care in the metropolitan city area but could not find it. The hearing officer's decision that claimant's travel for medical care was reasonably necessary was supported by sufficient evidence of record.

Affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge