APPEAL NO. 93520

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 June 1, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that it was not reasonably necessary for appellant (claimant) to travel to (city) to obtain appropriate and necessary medical care. Claimant asserts essentially that the decision is against the great weight of the evidence but also says that since his prior contested case hearing awarded him medical care and temporary income benefits, he assumed that he was awarded mileage too. Respondent (carrier) merely replies that the decision should be upheld.

DECISION

We affirm.

At the hearing the parties agreed that the issue was: whether claimant is entitled to mileage reimbursement for travel for treatment by his treating physician.

Article 8308-6.42(c) of the 1989 Act states that the Appeals Panel "shall determine each issue on which review was requested."

The Appeals Panel determines:

That the determination that it was not reasonably necessary for claimant to travel to San Antonio for appropriate and necessary medical care is sufficiently supported by the evidence.

Claimant is employed by the city of (city), Texas. On (date), he aggravated a prior condition; that injury was found to be compensable at a contested case hearing; the decision was upheld on review in Texas Workers' Compensation Commission Appeal No. 92515, decided November 5, 1992. That determination stated that claimant was entitled to temporary income benefits and medical care.

Claimant, who resides in Harlingen, Texas, testified that at the time of the aggravation he had been seeing (Dr. L), who practiced in (city), Texas, since October 1991, for a prior injury. He added that when he suffered the aggravation of his prior injury, he saw his local family doctor, (Dr. C) one time, one week after the aggravation; Dr. C told him to continue seeing Dr. L for the aggravation. Dr. C recorded chronic lower back pain when he saw claimant on April 20, 1992, and referred to claimant's "lower back injury (date)." Claimant testified that he had had "bad experiences" with orthopedic specialists in the Rio Grande valley; he named three doctors he saw in regard to orthopedic matters, but referred to one as having left the area to practice elsewhere. The carrier introduced a list of doctors, set forth by specialty, who practice in cities in the (city).

The claimant did not describe his particular condition in any detail to indicate why he, or another doctor, thought it reasonably necessary for him to travel to obtain necessary and appropriate care; he introduced no medical records to indicate testing done or the treatment plan that Dr. L had designed for him; he simply sought continued treatment by a doctor who had previously treated him. Conversely, the carrier chose to inquire whether Dr. L was "uniquely qualified." As a result, the evidence provides no clear answer to the question of reasonable necessity to travel to obtain "appropriate and necessary medical care" (the only substantive standard provided by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6) in regard to any medical care). Prior to the 1989 Act cases such as Aetna Casualty & Surety Co. v. Jennusa, 469 S.W.2d 423 (Tex. Civ. App.-Beaumont 1971, no writ) and Peeples v. the Home Indemnity Co., 617 S.W.2d 274 (Tex. Civ. App.-San Antonio 1981, no writ) placed the burden to show that medical care was "reasonable and necessary" on the claimant.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Article 8308-6.34(e) of the 1989 Act. Unlike the circumstances in Texas Workers' Compensation Commission Appeals No. 93361 and 93441, decided June 23, 1993, and July 16, 1993, respectively, which found that the carrier agreed to the claimant's use of a particular doctor but did not agree to pay travel, there was no showing in this case that the carrier agreed to the use of Dr. L. The hearing officer, as fact finder, must determine whether it is "reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary care." While Rule 134.6 makes no special provision for considering travel to see a treating doctor, the 1989 Act at Article 8308-4.62 (effective until December 31, 1992) and at Article 8308-4.63 allows each claimant at least an initial choice of doctors and neither section includes any territorial restrictions although the latter section requires that selection be made "from a list of doctors approved by the Commission." A hearing officer could certainly give Article 8308-4.62 or 4.63 weight when a travel question involving a treating doctor chosen by the claimant is raised. If the claimant, in addition, showed through medical records how he was being treated, to include what had been done for him, the hearing officer could also choose to give such evidence weight in deciding what is "reasonably necessary" as to travel, observing that the rule imposes no requirement that a doctor be "uniquely qualified" to treat a patient or his injury. *Compare* Texas Workers' Compensation Commission Appeal No. 93239, decided May 14, 1993, in which a claimant was paid travel expense for follow-up to surgery performed before he moved hundreds of miles away.

The decision and order that the claimant is not entitled to mileage reimbursement for travel to obtain treatment from Dr. L is not against the great weight and preponderance of the evidence and is affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge