APPEAL NO. 93918

This appeal is considered in accordance with the Texas Workers' Compensation Act (1989 Act), TEX. LAB. CODE ANN. §401.001 *et seq.* (formerly V.A.C.S. art. 8308-1.01 *et seq.*). On September 17, 1993, after one continuance, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine the issues of whether the claimant, MG, had a kidney problem that was related to his original inhalation injury, and whether he was entitled to receive additional reimbursement from the carrier for mileage and meals reasonably related to medical treatment for his injury. The claimant had sustained a lung injury on (date of injury), while employed by (employer).

At the hearing, the issue relating to the kidney injury was dropped. Also, the hearing officer determined during the hearing that claimant had a separate claim under another docket number for a back injury, and the issue relating to mileage was amended to the extent that claimant was also seeking reimbursement for mileage relating to medical treatment of the back injury. These charges were taken out of the hearing on the inhalation claim. This was done with no objection by, and by agreement of, the parties.

The hearing officer determined that claimant was entitled to additional reimbursement for mileage between (city) and (city), Texas, and for three meals for which receipts were presented which had not been reimbursed by the carrier.

The claimant appeals the decision, claiming that his actual mileage exceeded the mileage indicated by the Official State Mileage Guide (which the hearing officer used as the basis for his calculations). The claimant also complains about having another contested case hearing for mileage, a contention that appears to relate to travel for medical treatment for his back. The carrier responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The claimant stated that he was unable to find satisfactory medical treatment for his lung condition in or around (city), Texas, and was referred by both the Texas Workers' Compensation Commission (Commission) and the American Lung Association to the University of Texas Health Center in (city), Texas. He made six trips to this center, receiving only partial reimbursement from the carrier based upon mileage between (city) and (city), Texas. Claimant stated that the reason for this, as he understood it, was that the carrier maintained he could find adequate medical treatment in (city). Although the carrier's representative argued at the hearing that the carrier did not believe that travel to (city) was medically reasonable and necessary, claimant stated that the doctor visits to (city) were paid by the carrier.

The claimant argued that the Health Center was on the opposite side of the (city) city limits, and that he had to do additional driving around the city to put gasoline in his car and get meals, as well as travel to a motel on occasion. The claimant testified at the hearing

that his travel between (city) and (city) amounted to 656 miles round trip. He provided three unpaid meal receipts for three of the trips.

The hearing officer took official notice of the Official State Mileage Guide and determined that the mileage reflected therein between (city) and (city) was 541.8 miles round trip. He further determined that the reimbursement rate applicable to state employees was $0.275 per mile. The amounts actually paid by the carrier for each of six trips was put into evidence, and the hearing officer determined that claimant was owed an additional $232.51 for mileage and meals.

During the hearing, the claimant also testified that he drove ten times to the Texas Back Institute in (city), Texas. However, it became clear that such travel related to a separate back injury claim filed by the claimant, when the claimant objected to the carrier 2offering evidence relating to his back injury. These trips were taken out of this hearing, with the claimant stating that he had "no objection" to this action.

The rules of the Commission make clear that for medically-related reimbursement for travel, the shortest point between two cities, rather than the actual mileage driven, is used as the measure of reimbursement. The relevant parts of the specific rule governing such reimbursement, TEX. W. C. Comm'n Rules, 28 TEX. ADMIN. CODE §134.6(a) (Rule 134.6), state:

> (a)When it becomes reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary medical care for the injured employee's compensable injury, the reasonable cost shall be paid by the insurance carrier. The reimbursement shall be based on the following guidelines:
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> (1)the mileage shall be greater than 20 miles, one way, to entitle the injured employee to travel reimbursement;
> (2)reimbursement shall also be paid based upon the current travel rate for state employees. The shortest route between two points shall be used; and
> (3)when travel involves food and lodging, these items will be based upon the current rate for state employees.

The rule plainly sets out a method that does not pay all expenses actually incurred, but provides a uniform and reasonable rate of reimbursement for injured employees. *See* Texas Workers' Compensation Commission Appeal No. 93264, decided May 7, 1993. The resort to the state employees' measure of reimbursement replaces such variables that could influence mileage expended such as the cost of gasoline, the type of transportation used, the mileage an individual vehicle obtains, the familiarity of the employee with the roads, or the location of individual health care providers within a town. The hearing officer correctly applied this rule in arriving at his decision. We cannot find error based upon claimant's appeal.

The claimant's complaint about the necessity for two hearings is also not a basis for finding error. First of all, matters relating to the necessity of medical care for a different claim and another injury should be heard as part of that other claim. Second, claimant clearly agreed to have the (city) mileage claims separated out of this hearing. It is hoped that another hearing can be avoided on this same issue in the other claim if both parties accept the standard for calculating mileage as set out in this decision, and in Rule 134.6.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not find that to be the case here, and affirm the decision.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Thomas A. Knapp
Appeals Judge

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Gary L. Kilgore
Appeals Judge