

APPEAL NO. 94364

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 29, 1993, a contested case hearing was held in (city), Texas, (hearing officer) presiding. At the conclusion of the evidentiary portion of the hearing, the hearing officer announced that the hearing would be recessed for 10 days to allow the parties to obtain additional evidence. The hearing officer's decision states that the record was closed on February 22, 1994. The unresolved issues from the benefit review conference were:

1. Did the Claimant have "disability" as a result of his injury on (date of injury)?

2. Who is the Claimant's current treating doctor?

In a discussion with the parties, the hearing officer rephrased the second issue to include:

1) Did the Claimant select an alternate doctor in a manner that is consistent with the requirements of the Texas Workers' Compensation Act?

2) Was authorization for the health care . . . obtained in a manner that is consistent with the requirements of the Texas Workers' Compensation Act?

The hearing officer determined that the claimant had disability, as defined by the 1989 Act, from August 10, 1993 (all dates are 1993, unless otherwise noted), through November 29th, but that the claimant had not complied with Texas Workers' Compensation Commission (Commission) rules when changing treating doctors and therefore the carrier is relieved of liability for the payment of health care for four specific bills.

Appellant, carrier herein, does not contest any of the hearing officer determinations, but requests that we "modify" the hearing officer's decision with additional findings of fact and conclusions of law, relieving carrier of liability for certain additional specific health care benefits and general additional relief for unspecified health care benefits rendered in the past. Respondent, claimant herein, filed a response indicating disagreement with the hearing officer's decision, but stating that claimant did not wish to pursue an appeal. Claimant does object to carrier's additional proposed determinations and requests that carrier's proposed modifications be denied.

DECISION

Finding that the determinations and decision of the hearing officer have not been appealed and further finding that the Appeals Panel does not have jurisdiction to grant the sought after relief, the decision and order of the hearing officer are affirmed.

We find the hearing officer's statement of the evidence to be a fair and accurate recitation and adopt it for purposes of this decision. By way of background, claimant, a fire fighter with a private employer, had sustained a right knee injury and had surgery on the knee in 1987. On (date of injury), claimant stepped on a charged fire hose coupling, twisted his left ankle and fell to the ground on his knees, injuring both knees. Claimant saw Dr L.,

the company doctor on January 25th, and was referred back to (Dr. C) who had been claimant's treating doctor on the 1987 knee injury. Dr. C's office was some 75 to 100 miles away from claimant's residence. Claimant saw Dr. C at least twice in February and once on April 21, and became claimant's initial treating doctor. According to claimant's testimony, because claimant did not want to miss work and in accommodation with the employer, claimant continued working full time from (date of injury) until early August. Claimant testified that in late July or early August he needed additional medical care for his knee and because he did not want to drive all the way to see Dr. C, he looked in the telephone book "yellow pages" and sought treatment from (Dr. R), an orthopedic specialist. After an initial visit with Dr. R on August 9th, Dr. R referred claimant to (Dr. W), at the (clinic). Dr. W evaluated claimant and recommended surgery for the right knee on August 11th. Claimant testified he so informed his employer. Dr. W performed surgery consisting of a right anterior cruciate ligament (ACL) reconstruction on August 19th at a local hospital. Claimant consulted an attorney in late August or early September and filed an Employee's Request to Change Treating Doctors (TWCC-53) on September 13th. The TWCC-53 was approved by the Commission on September 15th.

The issue at the CCH essentially was the carrier's responsibility for the medical bills of Dr. R, the clinic, Dr. W, and the hospital and associated medical expenses incident to the August 19th knee surgery. The hearing officer left the record open (for 10 days) in order to allow claimant to submit additional evidence of authorization of the medical bills and for carrier to submit the medical bills available to it. Claimant, by letter dated December 6th, provided affidavits regarding recorded authorization for claimant's treatment and surgery. Carrier, by letter dated December 8th, provided medical bills from Dr. W for treatment on August 18th, 19th and 27th in the amount of \$3,305.97, an anesthesia bill for August 18th and 19th in the amount of \$699.30, a bill from the clinic for care on August 9th in the amount of \$123.73 and pharmacy bills for medication on August 20th through 27th in the amount of \$120.11. The hearing officer recites in his decision that the record was closed on February 22, 1994.

The hearing officer, on the pertinent issues found:

FINDINGS OF FACT

- 6.The Carrier is relieved of liability for payment of health care provided by [Dr. R] "[clinic]" on August 9, 1993. The total cost is \$123.73.
- 7.The Carrier is relieved of liability for payment of health care provided by [Dr. W] on August 18, 19 and 27, 1993. The total cost is \$3,305.97.
- 8.The Carrier is relieved of liability for payment of health care provided by Anesthesia Care on August 18, and 19, 1993, at the direction of [Dr. W]. The total cost is \$699.30.

9.The Carrier is relieved of liability for payment of health care provided by [Pharmacy] between August 20 and August 27, 1993, at the direction of [Dr. W]. The total cost is \$120.11.

10.The Claimant requested that he be allowed to change treating doctors. By signed order, dated September 15, 1993, the Commission approved the Claimant's request to change treating doctors. [Dr. W] became the Claimant's treating doctor on September 15, 1993.

11.The Carrier is responsible for the payment of all necessary and reasonable health care provided by [Dr. W] or under his direction, after September 15, 1993.

Carrier states it "agrees with the opinion of the hearing officer and the Findings of Fact and the Conclusions of Law; however, the carrier states that certain additional Findings of Fact and Conclusions of Law should have been made." Carrier alleges that at the conclusion of the CCH, it had submitted "all of the medical bills in its possession to the hearing officer" Carrier goes on to state:

After this information was provided to the Hearing Officer, and presumably after the Hearing Officer had the information upon which he was going to base his Decision, and after the taking of evidence was closed, the Carrier was presented with a bill that it was previously unaware of from the [Hospital] (date of service August 19, 1993,) in the amount of \$6,636.56. It was apparent that this treatment at the [Hospital] was provided by or at the direction of [Dr. W] at a time earlier than when [Dr. W] became the Claimant's treating doctor, which did not occur until September 15, 1993.

(The record is not clear when the carrier received the hospital bill and/or why no attempt was made to submit it to the hearing officer for his review). To rectify the situation, the carrier proposes certain findings and conclusions which would establish that it would not be liable for any medical or health care costs provided to claimant prior to September 15th, except those specifically provided by Dr. C.

Section 408.022(a) provides that an employee is entitled to the employee's initial choice of a doctor and (b) that if an employee is dissatisfied with the initial choice of a doctor, the employee may notify the Commission in writing and request authority to select an alternate doctor. Section 408.024 states:

Except as otherwise provided and after notice and an opportunity for hearing, the commission may relieve an insurance carrier of liability for health care that is furnished by a health care provider or another person selected in a manner inconsistent with the requirements of this subchapter. [Citation omitted.]

See also Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9), effective July 1, 1993. That procedure resulted in the hearing officer's determinations noted above.

The Appeals Panel, in its review is limited to the record developed at the CCH and the written requests for appeal and response filed with the Appeals Panel. Section 410.203(a). The Appeals Panel may: (1) affirm the hearing officer's decision; (2) reverse that decision and render a new decision; or (3) reverse the decision and remand the case to the hearing officer. Section 410.203(b). In this case, the carrier does not appeal any of the determinations of the hearing officer, but rather requests that the Appeals Panel enter further findings of fact and conclusions of law expanding the scope of the hearing officer's decision. The hearing officer deliberately requested the available medical bills and made specific findings as to those bills. Carrier wishes us to address a bill not before the hearing officer and to expand the hearing officer's decision to address any other health care, known and unknown, provided to the claimant prior to September 15th, "except that health care provided by [Dr. C]." We are unwilling to do so. To adopt the carrier's proposal would possibly relieve carrier of liability for services authorized by Dr. C, but performed elsewhere. Further, the hearing officer apparently did not wish to render such a broad encompassing decision and we will not state, as a matter of law, that it was error for the hearing officer to limit his decision to the specific items presented to him.

We are mindful that the Appeals Panel has, on occasion, reformed and/or modified a hearing officer's decision to conform to the evidence (Texas Workers' Compensation Commission Appeal No. 931049, decided December 31, 1993; Texas Workers' Compensation Commission Appeal No. 92708, decided February 16, 1993), to adjust payments (Texas Workers' Compensation Commission Appeal No. 92576, decided December 14, 1992), and to correct typographical errors (Texas Workers' Compensation Commission Appeal No. 93529, decided August 2, 1993). The Appeals Panel has not reformed/modified or expanded a hearing officer's decision to include matters beyond the scope of the evidence at the CCH or beyond the scope intended by the hearing officer, and we decline to do so now.

In that none of the hearing officer's determinations are appealed and finding that the Appeals Panel does not have jurisdiction to reform/modify or expand a hearing's decision beyond the evidence presented and clearly beyond the specifics that the hearing officer addressed, we hereby affirm the hearing officer's decision and order.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge