APPEAL NUMBER 94993

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 in (City 1), Texas, on June 22, 1994, to decide the issue of whether the claimant is entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. Q and if so, in what amount. The carrier appeals the determination of the hearing officer, concerning the amount of claimant's mileage for each trip, that such mileage is reasonable, and that the claimant is entitled to $357.47 in reimbursement for the period in question. The claimant did not file a response.

DECISION

We affirm.

The claimant, who was employed by (employer), suffered a compensable injury on (date of injury). It was not in dispute that he treated with Dr. Q, nor that Dr. Q referred him for therapy, testing, and second opinions.

The claimant lived in (City 1), and his appointments were in other cities in the area. According to the claimant's testimony and exhibits, and as set out in the hearing officer's decision, the claimant was seeking reimbursement for the following trips for medical treatment in 1993:

23 trips to (Address 1), (City 2), (distance claimed by claimant: 20.3 miles each way);

four trips to (Address 2), (City 3) (21 miles each way);

two trips to (Address 3), (City 4) (20.1 miles each way);

two trips to (Address 4), (City 2) (23.6 miles each way).

The claimant had also claimed 34 trips to the (Address 1) address in 1994, but the hearing officer determined that because this claim was submitted to the carrier in June of 1994, and it had not been denied, it was not ripe for determination in this hearing.

The claimant said he used the shortest route between his home and the appointments, and that he clocked the mileage to and from his apartment building. The carrier hired a private investigator, Mr. P, to gauge the mileage from claimant's residence to the (Address 1) location. Mr. P said he drove the "most logical route," starting at the property line of claimant's apartment complex (rather than from claimant's individual apartment building), and concluded that the mileage was 19.7 miles. He said he clocked the mileage twice because his first trip was 1 1/2 miles shorter than the second (although he used the larger number). He did not clock the mileage between claimant's residence

and the other locations. The claimant said he drove the route proposed by the carrier and that it took him a longer amount of time because it contained more stop lights.

The carrier does not dispute that claimant's treatments at these locations were reasonable and necessary. Rather, it disputes the hearing officer's determination that claimant's mileage for each trip exceeded 20 miles, as required by Tex. W. C. Comm'n, TEX. ADMIN. CODE § 134.6 (Rule 134.6). That rule provides that mileage shall be greater than 20 miles, one way, to entitle the injured employee to travel reimbursement, that reimbursement shall be paid based upon the current travel rate for state employees, and that the shortest route between two points shall be used. The carrier further contends that Official State Mileage Guide (OSM Guide), of which the hearing officer took official notice in this case, provides that the mileage from (City 1) to the other cities is less than 20 miles, and that even if the OSM Guide is not used, the evidence as to the mileage was contradictory. The carrier cites as support Texas Workers' Compensation Commission Appeal No. 93918, decided November 16, 1993, in which the Appeals Panel stated that Rule 134.6 makes clear that for medically-related reimbursement for travel, the shortest point between two cities, rather than the actual mileage driven, is to be used as the measure of reimbursement.

The hearing officer took official notice of the OSM Guide, effective August 1, 1993 through July 31, 1994, and the following distances:

1.From (City 1) to (City 2): 18.8 miles.

2.From the (City 1) field office of the Commission to (City 2): 24.1 miles.

3.From (City 1) to (City 4): 10.6 miles.

4.From the (City 1) field office of the Commission to (City 4): 15.9 miles.

She also noted that the current travel rate for state employees is 28 cents per mile and that there were no distances from (City 1) to (City 3) listed in the OSM Guide.

With respect to whether the mileage of the OSM Guide must be used, the hearing officer stated that:

> While the city to city mileage from the Guide has been adopted in cases of travel of great distances, it cannot be concluded that the use of such city to city mileage is reasonable for local travel that exceeds 20 miles one way . . . It would not be a reasonable application of Rule 134.6 to disregard the actual mileage and deprive claimant of reimbursement for travel expenses he is entitled to under Rule 134.6 because [the OSM Guide] does not provide detailed information on local travel. [The OSM Guide] may be a helpful guideline but claimant is entitled to reimbursement at the rate of 28 cents per mile for his actual mileage as established in this matter.

Our reading of the statute and rule do not compel a conclusion that the hearing officer is bound to use the mileage found in the OSM Guide (as opposed to the state employees' travel rate, which the rule mandates). *See*, for example, subsection (c) of the rule, which requires a claimant seeking reimbursement to submit to the carrier a written request itemizing mileage traveled, which would be a superfluous provision if the rule mandated use of the mileage in the OSM Guides. Rather, it appears that mileage is a factual determination and the hearing officer is free to accept the most reasonable and credible evidence under the facts of the case. While we do not entirely subscribe to the concept of a distinction between mileage for long and short distances, we certainly appreciate the hearing officer's rationale that mere city-to-city distances could penalize a claimant who travels from the far reaches of one city to the opposite extremes of another. Taking that into consideration, the hearing officer in this case chose to credit the claimant's testimony and exhibits, which resulted in the mileage stated above. The 1989 Act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). We find that her determination is not so against the great weight and preponderance of the evidence as to be manifestly unfair and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

This decision should not be read as contravening the result in Appeal No. 93918, *supra*. In that case, the hearing officer heard testimony from the claimant concerning mileage but chose to make his determination based upon the mileage in the OSM Guide, clearly finding it to provide the more credible evidence. The panel in that case held that his decision was supported by the evidence, and affirmed. We do not read that decision to mandate the use the OSM Guides rather than other evidence, just as this case does not mandate the adoption of a claimant's own testimony.

Based upon the foregoing, the decision and order of the hearing officer are affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge