APPEAL NO. 990029

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 9, 1998. The single disputed issue as reported in the benefit review conference (BRC) report was: Is the respondent (claimant) entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. N as stated in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6). The hearing officer found that the claimant was entitled to reimbursement based on a travel distance of 21.1 miles, each way, between the claimant's residence and the doctor's office. The appellant (carrier) appeals the award of reimbursement for travel expenses. In doing so, it does not challenge the finding that the distance is 21.1 miles, but argues that the medical treatment was not reasonable and necessary and that the decision "exceeds the scope of the issue at hand and is improper in light of the other matters currently pending . . . ." The claimant replies that the only dispute was the mileage question and that the carrier "has waived or abandoned this issue by not raising that claim at the [BRC] and more importantly, at the Benefit [CCH]."

DECISION

Affirmed.

The position of the parties as reflected in the BRC report was that the claimant was or was not entitled to mileage reimbursement based on the actual mileage between the claimant's residence and the doctor's office. The benefit review officer recommended resolution of the issue solely on this basis. After the hearing convened, the hearing officer and the parties actually drove the distance. The hearing officer concluded from reading the odometer in the car used for the travel that the distance was 21.1 miles. The carrier does not appeal this determination. *See* Texas Workers' Compensation Commission Appeal No. 970027, decided March 24, 1997.

Rule 134.6(a) provides that:

> 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:
>
> (1) the mileage shall be greater than 20 miles, one way, to entitle the injured employee to travel reimbursement.

A review of the audiotape transcript of the proceedings below indicates that the carrier agreed to the formulation of the issue as contained in the BRC report and as read by the hearing officer. No response to the BRC report was in evidence and at no time during

the hearing did the carrier challenge reimbursement for travel expenses on any theory other than that the distance was not greater than 20 miles.

For the first time on appeal, the carrier asserts that it "filed a dispute long before the CCH stating that as of June 1998 none of [Dr. N's] treatment of the Claimant is reasonable or necessary. Therefore, the carrier would not owe mileage reimbursement benefits to the Claimant until after there has been a determination by the medical dispute process as to whether [Dr. N's] medical treatment for the time period in question . . . was reasonable or necessary."

In Texas Workers' Compensation Commission Appeal No. 94925, decided August 23, 1994, the hearing officer made findings of fact and conclusions of law on the issue of whether the carrier contested compensability on the grounds of untimely notice. The hearing officer also concluded that the carrier waived its right to pursue this issue at the CCH because the BRC report did not reference it and the carrier did not comment on the omission and did not otherwise mention it until the CCH. We stated that under these circumstances, the conduct of the carrier "indicated an affirmative abandonment of this defense . . . . To allow the issue now to be resolved at the [CCH] in our opinion, would severely compromise the administrative efficiency intended by the [1989 Act's] provision for mediation at a BRC." We concluded that the carrier waived the issue. In the case we now consider, the reasonably necessary defense was not raised either at the BRC or at the CCH; rather, only the actual mileage aspect for entitlement to reimbursement. On appeal, the carrier refers to, but does not identify, a separate dispute on this basis. Consistent with our decision in Appeal No. 94925, we decline to address the defense of "appropriate and necessary" care because it was not raised at the BRC or CCH.

Finding no legal error and the evidence sufficient to support the decision and order of the hearing officer, that decision and order is affirmed.

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Alan C. Ernst
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Judy L. Stephens
Appeals Judge