

## APPEAL NO. 990071

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 9, 1998, a hearing was held. He (hearing officer) determined that the appellant (claimant) was not entitled to reimbursement for travel expenses for medical care; he also found that the respondent (carrier) did not waive its right to dispute whether travel expenses should be reimbursed. Claimant asserts that there was evidence that the distance traveled was over 20 miles and that carrier did not file a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) to dispute the "benefit" of travel reimbursement. Carrier replied that the decision should be affirmed.

### DECISION

We affirm.

Claimant testified that he lived in city 1, and was treated by Dr. S in City 2. Claimant did not state when he applied for mileage reimbursement but both claimant and carrier provided a copy of a letter from carrier dated August 6, 1997, indicating denial of reimbursement for a period of time to July 21, 1997. Claimant contended at the hearing that the carrier waived its right to dispute reimbursement of travel expense because it did not file a TWCC-21 within 60 days; claimant also stated that reimbursement of this expense is a benefit.

Claimant testified that he drove a 1985 pickup, which he purchased last year, between his doctor's office and his house, and the distance was 23.1 miles. He also referred to a map that indicated the distance was 20.4 miles. Ms. S testified that she is an investigator and drove the shortest route between Dr. S's office and claimant's house in a new car and recorded a distance of 20.6 miles. Neither claimant nor Ms. S indicated that the odometer in the vehicle used was calibrated.

Ms. M testified that she works for employer, an affiliate of carrier. She drove from Dr. S's office to claimant's house and recorded 19.2 miles; she has had her odometer calibrated.

Maps were also referred to by Ms. S that indicated the distance between the two points was 22.9 and 23.1 miles. A map was provided by carrier which indicated that the distance was 19.8 miles.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The parties did not dispute that the criterion for travel expense involves the shortest distance from point to point as set forth in Texas Workers' Compensation Commission Appeal No. 970027, decided March 24, 1997. The hearing officer considered the testimony of Ms. M to be significant, pointing out that she provided the only mileage with a calibrated odometer. The hearing officer resolves conflicts in the evidence whether they be in regard to mileage or injury; as such, there was sufficient

evidence to support his determination that the correct mileage one way is less than 20 miles.

The hearing officer concluded that there is no requirement for the carrier to file a TWCC-21 to dispute mileage; he did find that the carrier denied mileage by a letter. Tex. W.C. Comm'n, TEX. ADMIN. CODE § 134.6 (Rule 134.6) provides that the claimant shall make a "written request" to the carrier for mileage reimbursement; no form is set forth. No requirement is provided as to what carrier must do to dispute; this rule concludes by providing that disputes as to travel expense will be resolved through the dispute resolution process.

Rule 124.4(a) provides that a carrier give notice to the Texas Workers' Compensation Commission in the "form, format, and manner prescribed . . . of any reduction or termination of income or death benefits." Then Rule 124.6 provides for notice when a claim is refused; it specifically relates such refusal to "temporary income, lifetime income, or death benefits" and then requires the use of a TWCC-21. Section 401.011(5) says that a benefit "means a medical benefit, an income benefit, a death benefit, or a burial benefit based on a compensable injury." No rule was found, and no such rule was cited by claimant, which says that a TWCC-21 is required to dispute travel reimbursement, such as Rule 124.6 does in regard to "temporary income, lifetime income, or death benefits." Section 409.021 only requires a carrier to act within 60 days in regard to contesting "compensability."

The evidence and the law sufficiently support the conclusion of law that states neither the 1989 Act nor the rules require filing a TWCC-21 to contest mileage reimbursement, and carrier did not waive the right to contest it.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge