APPEAL NO. 990200

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On January 5, 1999, a hearing was held. He (hearing officer) determined that the respondent (claimant) is entitled to mileage reimbursement in the amount of $454.16 for travel for medical care from April 13 to August 5, 1998. Appellant (carrier) asserts that it was error to find that it was reasonably necessary to travel to (city 1) for appropriate and necessary medical care, adding that medical care is not automatically reasonable and necessary just because it involves a claimant's first choice of treating doctor. The appeals file does not include any reply by claimant.

DECISION

We affirm.

Claimant worked for (employer). She testified that on _____, she injured her low back at work. There was no issue as to compensability of a low back injury. The only issue was whether claimant, who lives in (city 2), Texas, should be reimbursed for trips to (city 1) to see Dr. W or to have studies done at his direction.

There was no dispute that Dr. W was claimant's initial choice of treating doctor; therefore, carrier had not had an opportunity to dispute any change of treating doctor. Similarly, there was no evidence that carrier had agreed to claimant seeing Dr. W as the treating doctor. Claimant testified that in a 1994 back injury she had changed to Dr. W after another treating doctor would no longer accept her as a workers' compensation patient. She said she liked him and, although she had not seen him for several months when the injury in question took place, she wished to see Dr. W for this injury, too. (Claimant stated that Dr. W is an orthopedic surgeon.)

Claimant also stated that the prior carrier (1994 injury) did not dispute mileage as to Dr. W. She said that she first saw Dr. W for the 1998 injury on April 13, 1998; she saw him a total of six times from April 13 to August 5, 1998; Dr. W has treated her with injections; and he referred her for an EMG and an MRI. When asked why she did not obtain those tests in (city 2), claimant replied that Dr. W's office set up those tests for her after obtaining preapproval. The round trips to Dr. W and to the two tests varied but all were in the 200-mile round-trip vicinity, with the total of eight trips resulting in $454.16.

It is true as carrier states that the 1989 Act does not make travel to a claimant's original choice of treating doctor automatically reimbursable. Generally, Appeals Panel cases where there is no change of treating doctor involved or where there is no prior approval of the particular doctor's treatment state that the question of whether travel is reasonably necessary is for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 93520, decided August 5, 1993, provides some guidance even though it was an affirmance of a hearing officer's determination that travel

was not reasonably necessary. In that case, there was no evidence as to the treatment being provided; the opinion pointed out that a fact finder could give some weight to the 1989 Act's authorization of a claimant's first choice of treating doctor with no mileage restriction imposed; it further stated that evidence of treatment provided coupled therewith could result in a factual determination of travel being reasonably necessary. It added that there was no requirement for a claimant to show that a doctor was "uniquely qualified" in order for travel to be found reasonably necessary. For other decisions based on the hearing officer's factual determination as to reasonably necessary, *see* Texas Workers' Compensation Commission Appeal No. 951098, decided August 15, 1995, and Texas Workers' Compensation Commission Appeal No. 980649, decided May 13, 1998.

In this case, the hearing officer had before him the claimant's testimony that Dr. W was treating her with injections and that he had ordered various tests. He also had claimant's testimony that she had used Dr. W as a treating doctor previously in regard to a workers' compensation injury, with no dispute made, and wanted him to treat her based on his past treatment of her. He also had the undisputed fact that Dr. W was claimant's original choice of treating doctor for this injury. *See* Section 408.022 which provides, "the employee is entitled to the employee's initial choice of a doctor from the commission's list." Similarly, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9) also provides for entitlement to an initial choice from a list of treating doctors. Neither the applicable section nor applicable rule provides any distance limitation. There was no evidence presented indicating that Dr. W was not on the list of doctors referenced.

While carrier takes issue with the hearing officer's observation in his Statement of Evidence that to deny mileage reimbursement would effectively deny claimant her right to choose a treating doctor, that statement was directed at this claimant in this case. As such, it is probably correct; in addition, the hearing officer did not make a finding of fact to that effect, and his decision is not being affirmed on the basis of such a finding of fact or on the comment in the Statement of Evidence, but rather on the evidence, coupled with the provisions of the 1989 Act and applicable rule.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. With the evidence as set forth in this case and under the guidance provided in Appeal No. 93520, *supra*, there was sufficient evidence to support the hearing officer's determination that it was reasonably necessary for claimant to travel in order to obtain appropriate and necessary medical care.

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).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Judy L. Stephens
Appeals Judge