

APPEAL NO. 990630

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 23, 1999, a hearing was held. The hearing officer determined that appellant (claimant) has an average weekly wage (AWW) of \$777.05 and that it was not reasonably necessary for him to travel to obtain appropriate and necessary medical care. Claimant asserts that he had seen Dr. H in (City 1) previously and that the respondent (carrier) paid Dr. H's medical bills so it should pay for travel. Carrier replied that the decision should be affirmed, but added that, if travel is payable, claimant should not have been allowed to revoke his written agreement.

DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_, when, the parties stipulated, he injured his low back. The issues at this hearing were AWW and travel. While the explanation provided at the hearing as to why claimant had asked to void a written agreement concerning the AWW as opposed to the travel issue (and that request was granted), the parties basically agreed at this hearing to the amount of the AWW, \$777.05. There is no appeal by either party to the amount of the AWW.

There is no dispute that claimant's treating doctor was Dr. F, D.C. in City 2, Country. Claimant agreed that Dr. F thought it appropriate to refer claimant to an M.D. for treatment, and claimant testified that he asked Dr. F to refer him to Dr. H in City 1, Country, because, claimant said, he had received conservative care in 1992 for a back injury from Dr. H and wished to see him again.

Claimant testified that he has not requested a change of treating doctor with the Texas Workers' Compensation Commission, but that Dr. F has said he would relinquish care to Dr. H. Claimant first saw Dr. H for this injury on October 21, 1998, and has made a total of five trips to City 1 for care by Dr. H, including surgery at L4-5 in January 1999.

Carrier introduced a note from PS, an adjuster, dated September 24, 1998, in which she stated that notice was received of a referral to Dr. H; she wrote that claimant was told he would not be reimbursed for travel because reasonable and necessary treatment was available in City 2. (Claimant stated that he was not told his travel expenses would not be reimbursed.) Carrier also introduced a letter from Dr. F in which Dr. F stated that he had discussed referring claimant to a medical doctor in City 2, mentioning "Neurocare" which he said has "excellent physicians," but that claimant requested to be referred to Dr. H. Carrier also provided a copy of TWCC Advisory 98-06 which states, among other things, that a carrier may not "prospectively inform any health care provider" that it will not pay for service.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. As the fact finder, he could choose to believe that PS had told claimant in September 1998 that travel would not be paid, rather than that no communication about travel had been made. Whether claimant "insisted" upon seeing Dr. H or merely preferred to see Dr. H, the hearing officer could conclude that both Dr. F and PS had pointed out the availability of physicians in City 2, and claimant did, thereafter, beginning on October 21, 1998, go to City 1 five times for medical care.

In Texas Workers' Compensation Commission Appeal No. 990649, decided May 13, 1998, the Appeals Panel affirmed a hearing officer's determination, on remand, that travel was reasonably necessary but did say that it was a factual determination for the hearing officer to make when there has been no failure to contest a change of treating doctor. The fact that the carrier had "approved [the doctor's] treatment" (paid his chiropractic bills) after it had disputed both the change of treating doctor to him and the payment of travel reimbursement, was not sufficient to support the determination that travel expenses should be reimbursed as had been stated in the original decision (Texas Workers' Compensation Commission Appeal No. 972675, decided January 30, 1998). Appeal No. 990649, *supra*, cited Texas Workers' Compensation Commission Appeal No. 931084, decided January 12, 1994, regarding a carrier's potential for committing an administrative violation if it "unreasonably disputes the reasonableness and necessity of medical care."

With Tex. W.C. Comm'n, 28 TEX ADMIN. CODE § 134.6 providing for payment of travel expenses when it is "reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary medical care," a two-step process was created. The care must be appropriate and necessary and, if it is then reasonably necessary to travel to obtain that care, then travel pay will result. As stated, this case did not involve a change of treating doctor so there was no failure to dispute a request to change treating doctor. In addition, the evidence showed that carrier had notified claimant, in this case, before his first trip to see Dr. H, that it would not pay travel expenses if he chose to travel to City 1. The evidence in the record from Dr. F sufficiently supports the hearing officer's finding of fact that claimant "could obtain appropriate and necessary medical care in the City 2 area," and that finding of fact, along with other evidence, sufficiently supports the determination that it was not reasonably necessary for claimant to travel in order to obtain appropriate and necessary medical care. Therefore, the determination that claimant is not entitled to reimbursement for travel expenses is sufficiently supported by the evidence.

We note also that claimant states in his appeal that the hearing officer "was yelling and did not have time to understand because of his attitude." Having listened to the audio tape of this proceeding, no yelling was heard. The hearing officer did question claimant about his reasons for wanting to see Dr. H and developed the fact that claimant had received conservative care from him in 1992. We note also that the hearing officer stated at the outset of this hearing that he would disregard the written agreement since claimant did not want to be bound by it. The record discloses no basis to impugn the conduct of the hearing officer.

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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Thomas A. Knapp  
Appeals Judge

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Judy L. Stephens  
Appeals Judge