APPEAL NO. 990862

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 April 13, 1999. The issue at the CCH was whether the appellant, who is the claimant, is entitled to reimbursement of travel expenses to and from Dr. B. Although the opinion is silent on the matter, it was undisputed that Dr. B was the claimant's treating doctor.

The hearing officer denied the request for reimbursement, finding that it was not reasonable and necessary for the claimant to travel to the office of Dr. B in order to obtain medical treatment. The hearing officer found that appropriate medical care would be available in (City A), and that there was no evidence that it was not also available in (Town M), the rural town where the claimant currently resides and where he resided at the time of his injury.

The claimant has appealed, arguing that the hearing officer's decision is not supported, and further pointing out that, had he traveled to see a doctor in City A (a place identified by the hearing officer as an alternative location for available medical care), he would still have had to travel 70 miles one way. As to the finding that there was no evidence that appropriate care was not available in Town M, the claimant points out that the respondent (carrier) failed to prove the availability of care in Town M, and that its own evidence involved doctors in surrounding communities all of which were more than 20 miles from the claimant's residence. The claimant further asserts that the hearing officer has discretion to award some travel expense and need not award all, and that the claimant would be willing to accept travel reimbursement to City A, where the hearing officer found appropriate treatment could have been found. The carrier argues that the facts and law support the hearing officer's decision. The carrier argues that the hearing officer could not have awarded or considered travel amounts that did not involve travel to and from Dr. B's office.

DECISION

Reversed and rendered.

The claimant resided in Town M, and worked for (employer), which was located in (City B). The claimant said he injured his back through two separate incidents occurring close together in _____. The date of injury was _____. According to the claimant, his employer referred him to Dr. E, who was located about 70 miles from his residence, but close to where he worked. The claimant was first treated by Dr. E on August 17, 1998, and diagnosed with a lumbar sprain. The claimant said that about a week after this appointment, he received word that the carrier was disputing compensability of the injury.

The claimant said he was then faced with not having paid medical treatment and, therefore, wanted to locate a doctor who could continue to treat him although not assured

of payment. The claimant said that a number of chiropractors were suggested, who were, for the most part, Dr. B or persons who practiced with him. He undertook treatment with Dr. B, who was located in (Town R), a distance of 190 miles round trip.

The claimant said that he had, for an earlier malady in around 1995, undertaken treatment from a chiropractic clinic in Town M, but that this doctor ended up referring him to a doctor in City A. He had not contacted doctors in Town M after the current injury because he thought it unlikely he could be treated without assured payment. He said the carrier had never contacted him to suggest doctors closer to his residence. The claimant testified, however, that the carrier sought to have him undergo an independent medical examination with one of two doctors in City A, which request was denied by the Texas Workers' Compensation Commission (Commission) because the doctors were located beyond 75 miles from his residence.

The carrier presented as a witness (although not indicated in the decision) a legal assistant with its law firm, Ms. W, who, in preparation for the CCH, had contacted 20 health care providers in Town M and surrounding towns about their services. Of these, seven answered with information about their services; some of these responses indicated that they believed Ms. W intended to refer patients to them. Responses were received from providers located in (Town K), (Town T), (Town G), (Town A), and (Town C). With the exception of Town G, all of these towns appear (according to the map in evidence) to exceed 20 miles one way in distance from Town M.

Likewise, a legal assistant from the claimant's attorney's office, Ms. H, filed an affidavit and attached copies of pages from the yellow pages of Town M; she attached a copy of the questions she asked relating to size and services offered by area chiropractors. The essence of her statement is that, of those who responded, few had significant workers' compensation experience, in-house therapy services, or the ability to perform functional capacity evaluations.

The carrier determined to accept compensability of the claimant's injury on or about October 1, 1998; it appears that the carrier promptly thereafter disputed the tendering of mileage claims from the claimant. However, there was no evidence that there was a dispute made as to the claimant's selection of Dr. B as his treating doctor. The claimant said he was scheduled to see a second opinion doctor in (City T), which was over 20 miles from his home. There was no evidence that Dr. B was not on the list of doctors maintained by the Commission.

Finally, we note that the amount of travel at stake was stipulated to by the parties at the beginning of the CCH. The hearing officer records this amount as a total of $3,399.20.

The injured worker has the right to his initial choice of doctor from the Commission's list. Section 408.022(a). The Commission has allowed, as a medical benefit, the payment of travel expenses when "it becomes reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary medical care. . . ." Tex. W.C. Comm'n,

28 TEX. ADMIN. CODE § 134.6 (Rule 134.6). The mileage must be greater than 20 miles one way to entitle the claimant to travel reimbursement. Rule 134.6(a)(1). The Appeals Panel has long held that, where a treating doctor's selection is not disputed by the carrier, it follows that the claimant is entitled to the travel to and from the treating doctor. Texas Workers' Compensation Commission Appeal No. 93361, decided June 23, 1993; Texas Workers' Compensation Commission Appeal No. 951928, decided December 27, 1995; Texas Workers' Compensation Commission Appeal No. 961728, decided October 16, 1996. *See also* Texas Workers' Compensation Commission Appeal No. 950990, decided August 4, 1995, *and cases cited therein*. While Texas Workers' Compensation Commission Appeal No. 980649, decided May 13, 1998, notes that determination of reasonableness of travel is a factual matter for the hearing officer, reversible if against the great weight and preponderance of the evidence, such facts found by the hearing officer should, as a starting point and in accordance with our line of decisions on travel, forthrightly identify the treating doctor as a starting point, and whether his service in that capacity has been disputed by the carrier. We agree with the claimant that it is somewhat problematic for the hearing officer to deny any reimbursement while simultaneously finding that appropriate medical care could have been found by the claimant in City A, travel to which would have entitled him to reimbursement, albeit slightly less than the mileage sought herein. The hearing officer's factual finding regarding Town M falls short of an express finding that appropriate medical treatment was available in that town. ("A preponderance of the evidence does not indicate that appropriate and necessary medical treatment is not available. . . .")

As it is undisputed that Dr. B was the claimant's treating doctor, whose services were not disputed by the carrier at the time travel was undertaken, we reverse the decision of the hearing officer and render a decision that the claimant was entitled to the stipulated amount of $3,399.20 as travel expense.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge