APPEAL NO. 991124

Following a contested case hearing held on April 29, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant's (claimant) compensable low back injury is a producing cause of his current low back condition and that he is entitled to reimbursement of travel expenses for medical treatment from Dr. D and Dr. A in the total amount of $813.88. Claimant has appealed the latter determination, contending that he should be reimbursed for the costs of meals, lodging, and international bridge tolls and requesting that the Appeals Panel revise the amount of the reimbursement accordingly based on the dollar amounts he asserts. The respondent (self-insured) urges, in response, that a jurisdictional issue exists in that the Texas Workers' Compensation Commission's (Commission) Medical Review Division, not the Hearings Division, has the jurisdiction to decide the "current condition" issue; that claimant's appeal attempts to present new evidence for the first time on appeal concerning the costs of his food and lodging since his evidence below was limited to mileage reimbursement; and that, since "the doctor with which claimant has been treating is not a doctor on the TWCC [Commission] approved list," no medical treatment is reimbursable and, consequently, no mileage for such treatment.

DECISION

Affirmed.

The self-insured's response is not timely to constitute an appeal. Since the compensability issue has not been appealed, it has become final. Section 410.169.

The parties stipulated that on _____, claimant sustained a compensable injury to his lower back and that he reached maximum medical improvement on June 14, 1993, with a 10% impairment rating.

Claimant testified that, while employed by the self-insured with duties in a school cafeteria, he injured his low back on _____, when he slipped and fell while washing floor mats. He said he was treated by Dr. B of (city 1), the school doctor; that Dr. B later referred him to Dr. D of (city 2); that he was seen by both Dr. B and Dr. D during the 1992 - 1997 period; that he last saw Dr. D on July 10, 1997, and has not been reimbursed for that trip for which the presumably round-trip mileage was 330 miles; that, at that time, the self-insured stopped paying for his medical treatment; that he then began treating with Dr. A, who practices homeopathic medicine in (city 3), which is about 25 miles from thermal springs that are good for his back condition; and that he requires a specialist and cannot afford the fees of the doctors in city 1 nor the approximate $400.00 cost of purchasing the medications in the United States. Claimant said he saw Dr. A nine times between April 1997 and July 1998; that since July 1998, he has seen Dr. A "about five times"; and that he drove to Dr. A's office, rather than take the bus, for the last five visits.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6(a) (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 employee's compensable injury, the reasonable cost shall be paid by the insurance carrier; that reimbursement shall also be paid based upon the current travel rate for state employees using the shortest route between two points; and that when travel involves food and lodging, these items will be based upon the current rate for state employees. Rule 134.6(c) provides that an injured employee seeking reimbursement for travel expenses shall submit to the carrier a written request itemizing the mileage traveled and the expenses incurred and shall attach all receipts pertinent to the travel.

Claimant presented no testimonial or documentary evidence at the hearing which would support his request on appeal that the Appeals Panel revise the hearing officer's decision to reimburse him on the basis of $4.00 to $5.00 per meal for "around five meals each trip"; $15.00 for the cost of a motel on six trips; and $6.00 for use of the international bridge on 12 trips. The Appeals Panel only considers the hearing record, the appeal, and the response (Section 410.202(a)) and does not generally consider new evidence offered for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92209, decided July 13, 1992. To constitute newly discovered evidence, claimant must show that the evidence came to his knowledge since the hearing and that it was not due to a lack of diligence that he did not acquire it sooner. Texas Workers' Compensation Commission Appeal No. 92400, decided September 18, 1992. We agree with the self-insured's contention that claimant's evidence of his travel expenses for meals, lodging, and the international bridge fees cannot be considered by us for the first time on appeal.

There being no evidence upon which to grant claimant the relief requested of us and no basis to remand for further consideration, we affirm the hearing officer's decision and order.

_____
Philip F. O'Neill
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Dorian E. Ramirez
Appeals Judge