

APPEAL NO. 991308

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 May 4, 1999. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury on or about _____; whether she had disability; what was the average weekly wage (AWW); and whether the claimant was entitled to reimbursement for travel expenses for medical treatment. The parties agreed on the AWW and the hearing officer determined that the claimant sustained a compensable injury, had disability, and was entitled to reimbursement for travel. The appellant (carrier) appeals virtually all the findings of fact and conclusions of law by the hearing officer, essentially urging there is no evidence, or insufficient evidence, that the claimant sustained a new compensable injury, had disability, or was entitled to reimbursement. The claimant responds that there is sufficient evidence to support the findings and conclusions of the hearing officer and asks that the decision be affirmed.

DECISION

Affirmed, as modified.

The claimant asserts a back injury in a witnessed slip-and-fall injury at work on _____. She had a previous back injury in (prior date of injury) and a Report of Medical Evaluation (TWCC-69) in evidence indicates that she reached maximum medical improvement for this injury on September 15, 1997, with a zero percent impairment rating. In any event, the claimant received periodic treatment relating to back complaints between (prior date of injury) and the incident on _____. Following the _____, incident, she was sent to Dr. P on _____, with complaints of low back pain radiating to the leg and foot. In a report of January 12, 1999, Dr. P indicated he had seen her before for back pain but "that case was closed." He notes the slip-and-fall incident of _____, had x-rays taken, prescribed medication, placed work restrictions on the claimant, and, according to the claimant, referred her to Dr. V in (City 1), Texas, some 60 miles away. Dr. V notes in a report of January 15, 1999, that he had last seen the claimant on March 31, 1998; that she had been doing fairly well until the _____, incident; and that she "has had fairly severe pain and problems since that time." He stated she had landed on her buttocks "causing a fairly severe contusion in that area" and took her off work. The claimant requested and was approved to change treating doctors to Dr. C, D.O., also located in (City 1). Dr. C diagnosed lumbar spondylosis with myelopathy and radiculopathy and muscle spasms (two reports refer to cervical area; however, the body of the reports deal with the lumbar area and it was corrected to lumbar in the one report). The claimant testified, and records support, that she made some 17 round-trip visits to her doctors in (City 1). Also in evidence were off-work slips from Dr. P, Dr. V, and Dr. C covering periods the claimant is asserting as periods of disability. Many of the forms refer to date of injury as (prior date of injury); however, the claimant testified she was unable to

work from the _____, injury and that the date had been put on the form by the employer or someone other than herself.

The carrier pointed to and introduced evidence to show that the claimant had received periodic treatment for her 1997 back injury up to the time of the _____, incident. The carrier also pointed out that the date of injury was reflected as (prior date of injury) in several records and documents. However, other evidence shows that the claimant was working regularly up to the time of the _____, slip-and-fall and that following the incident she was under constant medical care and treatment and was taken off work for specific periods of time.

The carrier urges that the evidence does not establish that a new injury was sustained; rather, that the claimant's back pain, condition, and radiculopathy were a continuation of the 1997 injury. In situations as presented here it can be very difficult in determining whether a new injury is involved or whether the condition is merely a manifestation of a prior injury. Texas Workers' Compensation Commission Appeal No. 972208, decided December 8, 1997. And, whether a new injury has occurred is generally a question of fact for the hearing officer to determine from the evidence of record. Texas Workers' Compensation Commission Appeal No. 960690, decided May 13, 1996. Although there was some degree of conflict in the evidence, a matter for the hearing officer to resolve (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-(City 1) 1974, no writ); Section 410.165(a)), there was evidence from which the hearing officer could find that a compensable injury was sustained on _____. In addition to the testimony of the claimant, which could itself show a compensable injury (Texas Workers' Compensation Commission Appeal No. 990039, decided February 24, 1999), there was the additional matter that the claimant had been able to work up to the time of the _____, incident even though she was receiving periodic treatment for her back. Also, the medical records from her doctors support a much more serious condition following _____, as opposed to her condition before, and which placed limitations on her work ability that were certainly significantly enhanced after _____. From our review of the evidence, we cannot conclude that the hearing officer's finding of a compensable injury on _____, was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Having affirmed the finding of a compensable injury, we conclude there is sufficient evidence to support his determinations that the claimant suffered disability. The hearing officer found disability from January 8, 1999, through April 12, 1999. However, we find no evidence to support disability for the period from January 9 to 15, 1999. Indeed, the claimant testified that she was taken off work for one day by Dr. P and then was not off work until Dr. V took her off on January 15, 1999. Dr. C returned her to work on April 12, 1999. Thus, we conclude there is sufficient evidence to support disability for January 8, 1999, and for the period from January 15, 1999, through April 12, 1999. We set aside and reverse that part of the finding that finds disability from the _____, injury for the period January 9 to 15, 1999, and affirm the remaining period of disability.

The carrier urges that there is no evidence, or insufficient evidence, to support a finding that it is reasonable and necessary for the claimant to travel to (City 1) for medical treatment and, thus, she was not entitled to travel reimbursement. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6). The hearing officer found that the claimant was entitled to reimbursement for travel to receive reasonable and necessary medical treatment. The evidence showed that the claimant was initially referred to a doctor in (City 1) by the doctor in her community. Also, she subsequently requested a change to Dr. C, also in (City 1), and that this was approved, apparently without challenge. Dr. C was an osteopathic doctor and there was no indication one was available in the claimant's community. While it might seem that some of the physical therapy-type treatments claimant received at Dr. C's office would be available in the claimant's local community, we cannot conclude that the hearing officer's determination that the travel to receive reasonable and necessary medical treatment was so against the great weight and preponderance of the evidence as to be clearly wrong or unjust as to require reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We set aside and reverse that part of the decision that holds the claimant suffered disability for the period from January 9 to 15, 1999, and affirm the remainder of the decision and order.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Elaine M. Chaney
Appeals Judge