

APPEAL NO. 992940

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 1, 1999, a hearing was held. She (hearing officer) determined that respondent (claimant) is entitled to travel expense at the direction of Dr. M, in the amount of \$1,057.00. Appellant (carrier) asserts that it was denied a right to dispute the change of physician to Dr. M and that no finding was made that travel was reasonable and necessary. The appeals file contains no reply.

DECISION

We reverse and remand.

The record contains an exhibit showing that claimant requested a change of treating doctor from Dr. E to Dr. M on March 17, 1999. Carrier then disputed the change in treating doctor based on the distance involved of 55 miles each way. On April 15, 1999, the Texas Workers' Compensation Commission (Commission) checked a box on a form; the legend beside that box said:

Good cause does not exist to proceed with scheduling a benefit review conference [BRC] for the following reason: The claimant has the right to alternate choice of treating doctor. In addition, the doctor is within 75 miles of residence, similar to the restrictions placed on a carrier selected IME [independent medical examination] or RME [required medical examination] doctor. The carrier retains the right to dispute mileage deemed excessive and/or not reasonable. [Emphasis as written.]

The hearing officer commented in her Statement of Evidence that the Commission denied carrier's request for a BRC when it disputed the change of doctor request.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9) provides that an injured worker "is entitled to the employee's initial choice of treating doctor. . . . As of January 1, 1993, any change in treating doctor after the initial choice requires approval from the commission." Rule 126.9 appears to state that entitlement only attaches to the initial choice of treating doctor, while the Commission form's legend beside the checked box appears to say that there is a "right" to an "alternate choice" of treating doctor; that legend appears to base its denial of a forum for the carrier to question the change on this "right" and also on the fact that the doctor is within 75 miles of claimant. The form is correct in then saying that the 75-mile provision applies to IME doctors; it does not appear in Rule 126.9 addressing choice of treating doctor.

In addition, the hearing officer, while she made findings of fact that Dr. M provided reasonably necessary treatment and that because of that treatment, claimant's condition was properly diagnosed, did not make a finding of fact addressing whether or not the travel was reasonably necessary. See Texas Workers' Compensation Commission Appeal No.

992349, decided December 3, 1999, which remanded for findings of fact regarding whether it is reasonably necessary to travel after commenting that the hearing officer "never reached the issue of whether the travel was reasonable and necessary." Appeal No. 992349 also cited Texas Workers' Compensation Commission Appeal No. 951928, decided December 27, 1995, in saying that "travel expenses are appropriate where a claimant's request for change of treating doctor is properly authorized by the [Commission], although the change is disputed by the carrier." (Emphasis added.)

On remand the hearing officer should make findings of fact as to whether claimant's travel is reasonably necessary.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993

Joe Sebesta
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge