APPEAL NO. 992950

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 December 3, 1999. The issues at the CCH were whether the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the seventh compensable quarter and whether the claimant was entitled to travel expenses for medical treatment at the direction of Dr. R and, if so, in what amount. Prior to the beginning of the CCH the parties agreed to add the issue of whether the claimant was entitled to SIBS for the eighth compensable quarter. The hearing officer concluded that claimant was not entitled to SIBS for the seventh or eighth compensable quarters and that the claimant was entitled to reimbursement for travel expenses for medical treatment at the direction of Dr. R. The appellant (self-insured) files a request for review, arguing that the hearing officer erred in determining that the claimant was entitled to reimbursement for travel expenses for medical treatment at the direction of Dr. R. The is no response from the claimant to self-insured's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The only issue before us on appeal is the issue of reimbursement for medical travel. We will therefore restrict our discussion of the facts to those having bearing on this issue. The parties stipulated that the claimant sustained a compensable injury on November 10, 1994. The claimant testified that this injury required back surgery. The claimant testified that Dr. R had been her doctor for many years and had treated her from the beginning for her injury. The hearing officer summarized the evidence concerning the claimant's medical travel and her rationale in deciding that claimant was entitled to medical mileage reimbursement in her decision as follows:

> Claimant has shown, by a preponderance of the evidence, that she is entitled to reimbursement for travel expenses for medical treatment at the direction of [Dr. R]. Claimant moved from the [city 1], Texas area to [city 2], Texas approximately two years ago. She testified that [self-insured] previously paid for travel expenses for [Dr. R's] visits, and that she was never informed by [self-insured] that she needed to seek out another doctor. She testified that she was given the name of another doctor in her area and that she attempted to contact that doctor for an appointment but was told that she could not be seen by that doctor due to her previous back surgery. [Self-insured] has not shown that medical services of the type required by Claimant are available in [city 2]. Therefore, based on the evidence presented at this hearing, Claimant's travel from [city 2] to [city 1] to her treating doctor was reasonable and necessary and Claimant is entitled to reimbursement of travel expenses.

The self-insured, in asking for reversal, relies primarily on our decision in Texas Workers' Compensation Commission Appeal No. 960715, decided June 21, 1996. In that case, we affirmed the hearing officer's decision denying a claimant's request to change treating doctor. We do not find Appeal No. 960715, which dealt with a change of treating doctor, particularly relevant to the present case, which involves reimbursement for medical mileage. The carrier also cites our decision in Texas Workers' Compensation Commission Appeal No. 93520, decided August 5, 1993, which is a medical mileage case in which we affirmed the decision of a hearing officer who found that a claimant was not entitled to reimbursement for medical mileage.

We do not think that our decision affirming the hearing officer in Appeal No. 93520 requires reversal in the present case. First, affirming the fact finding of the hearing officer in Appeal No. 93520 that the travel was not reasonable and necessary in that particular case does not create a legal doctrine that a claimant is generally not entitled to travel reimbursement for medical treatment. This was explicitly recognized in Texas Workers' Compensation Commission Appeal No. 93952, decided December 1, 1993, where we affirmed the decision of a hearing officer that the claimant was entitled to medical travel reimbursement stating as follows:

> However, in this case claimant had been seeing Dr. S since July 22, 1991, apparently with the Commission's [Texas Workers' Compensation Commission] approval, and was operated on by Dr. S in October 1991. Carrier contends its situation is more akin to that in [Appeal No. 93520, *supra*], where the Appeals Panel affirmed the hearing officer's determination that it was not reasonably necessary for the claimant to travel to another city to obtain appropriate and necessary medical care for the aggravation of his prior back injury from the doctor who had treated the prior injury. In that case, unlike the one we here consider, the decision did not indicate that claimant had changed treating doctors pursuant to the provisions of the 1989 Act and Commission rules. And in Appeal No. 93520, *supra*, we recognized that neither the statute nor Commission rules impose any territorial restrictions on a claimant's choice of treating doctor. We find carrier's assertion of error on this issue without merit.

Second, the present case is factually distinguishable from Appeal No. 93520 in a number of respects. One major distinction is that in Appeal No. 93520 there was no showing that the claimant had followed the proper procedures in changing his care to the doctor to whose office he was seeking reimbursement for travel. In the present case, it is undisputed that Dr. R was the claimant's treating doctor under the rules of the Commission and no indication that the self-insured contended that the claimant was not entitled to care by Dr. R. This makes the present case far more akin to Appeal No. 93952, *supra*, than to Appeal No. 93520, *supra*.

Third, we note that there are a number of other cases where we have upheld that a claimant is entitled to medical mileage reimbursement. One of these that is particularly

relevant to the present case, and which is cited in our decision in Appeal No. 93520 is Texas Workers' Compensation Commission Appeal No. 93239, decided May 14, 1993. Appeal No. 93239, describes Appeal No. 93520, *supra*, as a case "in which a claimant was paid travel expenses for follow-up to surgery performed before he moved hundreds of miles away." Other cases where we stated a claimant was entitled to medical travel reimbursement include: Texas Workers' Compensation Commission Appeal No. 93361, decided June 23, 1993; Texas Workers' Compensation Commission Appeal No. 93441, decided July 16, 1993; and Texas Workers' Compensation Commission Appeal No. 990862, decided June 7, 1999.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgment for hers. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Philip F. O'Neill
Appeals Judge