APPEAL NO. 000015

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 10, 1999, in (city 1), Texas. With respect to the issues before him, the hearing officer determined that the Texas Workers' Compensation Commission (Commission) "did not abuse its discretion in denying [Dr. Y] as alternate doctor"; that "[t]he Commission's order approving [Dr. Y] as alternate doctor was improvidently issued"; and that the appellant (claimant) "is not entitled to reimbursement of travel expenses for medical treatment at the direction of [Dr. Y] and [Dr. H]." In his appeal, the claimant argues that the Commission abused its discretion in denying his request to change treating doctors from Dr. H to Dr. Y because there is no basis for the 75-mile territorial limit imposed on the claimant's choice of treating doctor. In addition, the claimant contends that the hearing officer erred in determining that he was not entitled to travel expense reimbursement for medical care at the direction of Dr. H and Dr. Y. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____, in the course and scope of his employment with (employer). The claimant, who lives in (city 2), Texas, initially treated with a doctor chosen by the employer. He testified that he saw that doctor two to three times and then was released to full duty. The claimant state that at that point, he decided to treat with Dr. H, an orthopedic surgeon, in (city 3), Texas, who had been recommended by a relative. The claimant testified that on March 9, 1999, he submitted a request to change treating doctors because Dr. H's treatment was not helping. That request was received in the city 1 field office of the Commission on March 11, 1999. On March 18, 1999, an official actions officer (OAO) in the city 1 field office denied the request to change treating doctors from Dr. H to Dr. Y, a chiropractor. In the section provided for giving the reason for the denial, the OAO wrote "[r]equested treating doctor is in [city 4] more than 75 miles from employee's residence in [city 2]." On March 16, 1999, another request to change treating doctors from Dr. H to Dr. Y was filed in a city 3 field office of the Commission. On March 23, 1999, an OAO with that field office approved the change. On appeal, the claimant does not challenge the hearing officer's determination that the city 1 field office, the field office managing the claimant's claim, and not the city 3 field office was the appropriate location for filing the request to change treating doctors; therefore, we will not discuss the subsequent Commission approval of Dr. Y as an alternate treating doctor further in this decision. Rather, we will focus on the issue of whether the Commission abused its discretion in denying the request to change treating doctors.

The claimant argues that the hearing officer erred in determining that the Commission did not abuse its discretion in denying the change from Dr. H to Dr. Y. We

have frequently noted that the question of whether the Commission improperly denied a request to change treating doctors is reviewed under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 970686, decided June 4, 1997, and the cases cited therein. An abuse of discretion occurs where the decision maker acts without reference to guiding rules and principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). As noted above, the single reason given by the city 1 OAO for denying the request to change treating doctors from Dr. H to Dr. Y is that Dr. Y's office is located more than 75 miles from the claimant's residence. In his discussion the hearing officer stated "although there may be no '75-mile' rule specifically applicable to choices of treating doctor, a 75-mile guideline is reasonable and readily inferable from the Commission's generally-applicable venue provisions." We cannot agree that a 75-mile restriction on the choice of treating doctors can be inferred from the venue provisions. Section 408.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9 (Rule 126.9) address the claimant's initial choice of a treating doctor and changes of treating doctors. Neither Section 408.022, nor Rule 126.9, imposes any restriction on the distance between the claimant's home and the location of his choice of treating doctor. In the absence of such a restriction, we find no basis for creating one from the venue requirement that a hearing be held within 75 miles of the claimant's residence. If either the legislature or the commissioners had intended to place a geographical limitation on the claimant's choice of treating doctors, that limitation would have been expressly stated. No such limitation exists in either the statute or the rules and we are unaware of any authority of a Commission OAO to impose such a limitation on the claimant's choice of treating doctor. The OAO denied the request to change treating doctors from Dr. H to Dr. Y for an improper reason; thus, the Commission abused its discretion in denying that request. Because the Commission abused its discretion in denying the request to change treating doctors, it follows that as of March 18, 1999, Dr. Y should have been approved as an alternate choice of treating doctor. Under the provisions of Rule 134.6, "[w]hen it becomes reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary medical care for the injured employee's compensable injury, the reasonable cost shall be paid by the insurance carrier." We have previously recognized that a carrier is liable for travel expense reimbursement for medical treatment at the direction of a treating doctor approved in accordance with the 1989 Act and the Commission's Rules. *See* Texas Workers' Compensation Commission Appeal No. 93952, decided December 1, 1993, and Texas Workers' Compensation Commission Appeal No. 93441, decided July 16, 1993. Therefore, we reverse the hearing officer's determination that the claimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. Y and render a new decision that he is entitled to reimbursement for reasonable and necessary travel expenses for medical treatment at the direction of Dr. Y after March 18, 1999, the date Dr. Y became an alternate treating doctor.

The hearing officer determined that the carrier is not be responsible for travel expense reimbursement for treatment at the direction of Dr. H because the claimant did not look for a doctor closer to his home. As we noted above, no such geographical limitation on the claimant's choice of treating doctor exists in the statute or the Commission's rules. Where, as here, the carrier does not assert any challenge to Dr. H serving as the treating

doctor, we believe that this case is analogous to our existing precedent that a carrier is liable for travel expense reimbursement for medical treatment at the direction of a treating doctor approved in accordance with the 1989 Act and the Commission's Rules. Appeal Nos. 93952 and 93411, *supra*. The hearing officer erred in determining that the claimant is not entitled to travel reimbursement for medical care at the direction of Dr. H for the period of time Dr. H was the claimant's treating doctor. Thus, we reverse that determination and render a new decision that during the period of time that Dr. H was the claimant's treating doctor, the claimant is entitled to reimbursement for reasonable and necessary travel expenses for treatment at his direction.

The hearing officer's decision and order are reversed and a new decision rendered that the Commission abused its discretion in denying the claimant's request to change treating doctors from Dr. H to Dr. Y on March 18, 1999. The claimant is entitled to reimbursement for reasonable and necessary travel expenses for medical treatment at the direction of Dr. H during the period of time that Dr. H was the claimant's approved treating doctor and he is likewise entitled to reimbursement for reasonable and necessary travel expenses to obtain medical treatment at the direction of Dr. Y after March 18, 1999, when Dr. Y became an alternate treating doctor.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge