APPEAL NO. 000388

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 January 28, 2000. The hearing officer determined that the respondent (claimant) is entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. K, for appointments on September 2, 1999; September 6, 1999; September 20, 1999; and September 23, 1999.

The appellant (carrier) has appealed, arguing that the hearing officer improperly admitted three documents over objection. The carrier also argues that reimbursement is not due for personal errands. There is no response from the claimant.

DECISION

We affirm.

This is a case which is significant largely because of the resources devoted to it compared to the amount in controversy ($193.01 according to one exhibit). Essentially, the claimant sought reimbursement for four round trips to and from his chiropractor. There were apparently transportation costs for visits in between the dates in controversy that were allowed by the carrier. Although the carrier argues that certain personal errands were made on a few of the journeys in controversy, each and every reimbursement request listed on one document was for an identical amount, 172.4 miles. However, it was stipulated at the CCH that the mileage distance between claimant's residence and the doctor's office was 136.4 miles round-trip (which in turn reduces the amount in controversy).

The claimant was injured on _____, and the injury was to his left wrist. He testified that he worked at the time of the CCH as a wine broker. Claimant said that his doctor, Dr. K, was a chiropractor who did not take appointments, but performed adjustments on a walk-in basis. Claimant went for adjustments twice a week. (If the reasonableness and necessity of such treatment nearly seven years later for a wrist injury has ever been disputed, it was not in evidence in this proceeding.) The claimant testified that the carrier paid for treatment to Dr. K on the dates under review. A bill from the doctor's office, admitted over the carrier's objection, actually shows that payment does not appear to have been made at first for the first two visits in question, although it appears to include the amount charged for the September 20th visit. However, it appears that the balance due was subsequently paid by the carrier in late November 1999 to Dr. K's office.

The claimant said that none of the visits involved going to Dr. K's residence, as he had done on occasion. By contrast, a letter from Dr. K (admitted over objection from the carrier) asserted that claimant was treated by him at his resident office on September 6, 1999, which was Labor Day. The claimant produced sign-in sheets from the doctor's office for the days in question, which also include the time he signed the sheet.

The carrier hired a private investigator for surveillance on the claimant. A report was generated. There was no surveillance on September 6th. On September 2nd, the investigator confirmed that claimant was present at his residence from 5:00 a.m. to 10:00 a.m., when surveillance was apparently ended. However, the detailed notes show that a vehicle left the claimant's residence at 9:36 a.m. and headed toward Interstate 10, and turned west toward City 1. On September 20th, the investigator went to Dr. K's office, said Dr. K was there and that the claimant did not show up. He said that he went to claimant's residence and did not see the claimant. The hours of surveillance are listed as 8:00 a.m. to 1:00 p.m. The detailed notes show that the investigator was at Dr. K's office from 9:00-9:30 a.m., and at claimant's residence from 10:45 a.m. to 1:00 p.m. On September 23rd, the investigator confirmed that claimant arrived at Dr. K's office and was there about 15 minutes, and then went to several stores before returning home. The detailed notes, however, indicate that claimant was only seen leaving (not arriving) at Dr. K's office at 9:38 a.m. The sign-in sheet for that day shows claimant arrived at 9:20 a.m.

At the beginning of the CCH, the carrier objected to three exhibits for failure to exchange. The claimant responded that these exhibits had been sent on the 16th day after the benefit review conference (BRC), and that one document had been available at the BRC. The carrier stated that this document had not actually been exchanged but was shown only to the benefit review officer. The carrier said that records were received through the untimely exchange on January 3, 2000. The claimant said that the other two exhibits were exchanged as soon as they became available to the claimant. The hearing officer admitted them on a finding of good cause. These records include a letter from Dr. K verifying service on September 6th, a bill from Dr. K's office purporting to show payment for the disputed dates, and a statement from the claimant of what he did on the days in question.

We cannot agree that the hearing officer erred in admitting these documents. The statement from claimant is essentially a summary of, or supplement to, his live testimony. Concerning the evidence of bills paid by the carrier, the hearing officer determined that there was good cause and these had been exchanged as soon as available. We further note that such evidence was primarily within the possession and control of the carrier, not the claimant, but was evidence that the claimant would have had to request from his doctor if not exchanged by the carrier. The hearing officer accepted the claimant's assertion that the document was exchanged as soon as it was received by the claimant, in this case one day after the date due. Finally, the hearing officer could also believe that the letter from Dr. K was readily available at the BRC and did not have to be re-exchanged. In any case, it was duplicative of the claimant's testimony and we cannot agree that its admission, even if error, constituted reversible error.

Whether the claimant performed personal errands to and from the doctor's office is an argument to some extent "trumped" by the stipulation of the parties that the mileage to and from the doctor's office is 136.4 miles round-trip. This stipulation effectively filters out any inflation of amounts sought due to personal mileage. Consequently, the question to resolve was whether the claimant went to and from the doctor on the days alleged.

The hearing officer evidently believed that the investigator's report did not rule out claimant's presence at Dr. K's office on two of the dates, and the report confirmed his presence on September 23rd at Dr. K's office. Payment by the carrier for treatment on the dates in question is also evidence that the transportation for these treatments should be paid as well. We cannot agree that the hearing officer's resolution of the conflicting evidence is against the great weight and preponderance of the evidence, and affirm her decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge