APPEAL NO. 000467

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 September 27, 1999. In that case, the Appeals Panel reversed and remanded the case for further consideration and development of any further evidence deemed necessary because the hearing officer failed to reach and did not make any findings regarding a reasonable and necessary analysis for the entitlement to travel expenses. Texas Workers' Compensation Commission Appeal No. 992349, decided December 3, 1999. Although a rehearing was initially scheduled, it was canceled and the parties were directed to submit briefs on the issue. The hearing officer subsequently issued the decision now under review and determined that the respondent (claimant) was entitled to receive reimbursement for medical travel expenses. The appellant (carrier) appeals, urging that the hearing officer has again erroneously tied travel expenses to the selection of a treating doctor, has committed error in implicitly applying waiver by the carrier, and has again failed to reach the real factual issue in dispute, that is, whether the travel was reasonably necessary. No response is on file.

DECISION

Reversed.

The factual setting of this case is set forth in detail in Appeal No. 992349, *supra*, and will not be repeated here. Succinctly, the claimant sustained a shoulder injury on _____, and treated with Dr. M, her initial treating doctor (she had previously treated with Dr. M in 1981 or 1982 for a shoulder injury), in a city (City A) some 446 miles round-trip distance from her residence and where the injury occurred (City D). Her family doctor, Dr. F, when she lived in City D, treated her for other conditions, did a pre-surgery physical, and removed staples after her shoulder surgery. At the time of her injury she went to a local emergency room and was advised to go to a hospital in (City C) which was 32 miles from her home. She stated she listed Dr. M as her treating doctor, was advised to see another orthopedic surgeon in City C, which she did, and to follow up with her doctor. Subsequently, the claimant moved to (City S), in August 1998, and continued treating with Dr. M, although she also saw doctors in City S. She first filed for medical travel visits to Dr. M in April 1999, stating that this was when she first became aware she could seek reimbursement. The carrier disputed the travel expenses as not reasonable and necessary.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6(a) (Rule 134.6(a)) provides that "[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 reversed and remanded the original decision because there were no factual findings or analysis as to whether it became "reasonably necessary for (claimant) to travel in order to obtain

appropriate and necessary medical care . . . ." In her decision on remand, the hearing officer has again failed to make factual findings or an analysis on whether it became reasonable and necessary to travel in order to obtain appropriate and necessary medical care. Rather, the hearing officer again finds that "[s]ince the treating doctor's selection was not disputed by the Carrier, the Claimant is entitled to the travel to and from the treating doctor." We rejected that basis in our prior decision as we did the application of a waiver theory.

The hearing officer also found that the trips to Dr. M were for reasonable and necessary medical treatment. That may well be true, but that does not resolve the issue nor does it address the requirements of the remand. The rule clearly requires that the travel be "reasonably necessary" to obtain appropriate and necessary medical care. That Dr. M provided appropriate and necessary medical care to the claimant or that the claimant's travel to Dr. M for such treatment, does not answer the requirements of the rule, that is again, whether it became reasonably necessary to travel in order to obtain appropriate and necessary medical care. There was evidence before the hearing officer that appropriate and necessary medical care for the claimant was available much closer than City A. While it may be understandable that the claimant desired to return to a doctor who had previously treated her for a shoulder condition, and she chose to do so even though it was a 446-mile round trip, this does not address itself to the provisions of Rule 134.6(a), and the hearing officer has again failed to analyze and make necessary findings of fact in this regard. We agree with the carrier's position that the plain language of the rule requires the claimant prove, and findings be made, on the reasonable necessity of the travel, as opposed to only addressing whether the treatment received as a result of the travel was reasonable and necessary medical treatment. *See* Texas Workers' Compensation Commission Appeal No. 961842, decided November 1, 1996. Since the necessary analysis and findings specified in the remand have not been met, and another remand is not authorized (Section 410.203(c)), we reverse the decision and order of the hearing officer and hold that the decision fails to determine whether the travel in issue was reasonably necessary under the provision of Rule 134.6(a). Appeal No. 992349, *supra*; Texas Workers' Compensation Commission Appeal No. 951098, decided August 15, 1995. *See generally* Texas Workers' Compensation Commission Appeal No. 960561, decided May 1, 1996.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Alan C. Ernst
Appeals Judge