

APPEAL NO. 000500

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 February 2, 2000. The issue at the hearing was whether the appellant (claimant) was entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. E, a chiropractor, and, if so, for what amount. The hearing officer determined that the claimant was not entitled to reimbursement for travel expenses. The claimant appeals, requesting that we reverse the hearing officer's decision and render a decision in her favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Because of the limited nature of the issue before us on appeal, our factual recitation will be limited to those facts most germane to that issue. The parties stipulated that the claimant sustained a compensable occupational disease injury on _____. The claimant began treating with Dr. E, a chiropractor, immediately after her injury. Dr. E's office is located 38 miles from the claimant's residence; thus, it is a 76-mile round trip each time she goes to the doctor. The claimant made 53 round trips to Dr. E's office in the period from January 15 to August 24, 1999. Dr. E referred the claimant to Dr. W, a plastic and reconstructive surgeon, who performed right carpal tunnel release surgery on the claimant. She also submitted a mileage reimbursement request for seven trips to Dr. W's office, which is 36.5 miles one way from her house and 73 miles round trip. In total the claimant requested travel expense reimbursement in the amount of \$1,270.92 based on a total of 4,539 miles at \$.28/mile.

The claimant testified that she is a vice president with her local union and that she initially sought treatment with Dr. E because she was familiar with him based upon his attendance at a workers' compensation training session given for the union members about a month before her injury. She testified that she attempted to change treating doctors about the time that her claim was denied but the doctors she contacted would not agree to see her because her claim was being denied by the carrier. She testified that she did not attempt to change treating doctors after her injury was found to be compensable at a prior hearing because she did not want to delay her treatment further while the request to change treating doctor was being processed. On cross-examination, the claimant testified that she did not ask the entity that provided her with assistance in pursuing her claim to assist her in her attempt to change treating doctors because she did not know that they did that.

The hearing officer's determined that the claimant was not entitled to reimbursement for travel expenses under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 134.6 (Rule 134.6) for treatment from and at the direction of Dr. E, her treating doctor, because she did not sustain her burden of proving that travel in excess of 20 miles one way was reasonably necessary to secure medical treatment. The question of whether the claimant had demonstrated entitlement

to reimbursement for travel expense under Rule 134.6 was a question of fact for the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. In this case, it is evident from the hearing officer's decision that she was not persuaded by the claimant's evidence that travel was reasonably necessary for her to obtain appropriate treatment. See Texas Workers' Compensation Commission Appeal No. 000476, decided April 14, 2000. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates that the hearing officer' determination that the claimant did not sustain her burden of proving that it was reasonably necessary for her to travel to obtain appropriate medical treatment is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge