APPEAL NO. 000730

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 March 9, 2000. The hearing officer determined that the appellant (claimant) is not entitled to reimbursement for mileage under Tex. W.C. Comm=n, 28 TEX. ADMIN. CODE ' 134.6 (Rule 134.6) in that the route for which he sought reimbursement was not the shortest route and his mileage, had he taken the shortest route, would be under 20 miles one way. The claimant appealed, and argues that the reference in Rule 134.6 to taking "the shortest route" in order to obtain reimbursement for mileage should be interpreted to mean "shortest reasonable route." The respondent (self-insured) responds that there were several routes available to claimant which would be under 20 miles. The self-insured argues some factual discrepancies between claimant's request for reimbursement and his testimony at the CCH.

DECISION

We affirm the hearing officer's decision.

In brief, the claimant contended that the shortest route, down (route), posed a problem because it was under construction, bumpy, and rough to the point of being painful on his back and took longer than other routes he used in terms of time. He asserted that taking (route) could take up to one and one-half hours. As the testimony was developed, it turned out that he lived very close to (route) and could not avoid traveling some distance on that road for trips out of his neighborhood, even under the alternate route he used to go to his treating doctor. The claimant said he had taken the rougher, shorter route five times and said that he was not asking the self-insured to pay for those trips (although he had initially answered a compound question "yes" when asked if he had taken out those trips or was seeking payment). The claimant said he ascertained that his preferred route was 22 miles one way by setting the mileage gauge on his automobile.

A video that claimant said was taken by his attorney, and which he had never seen, was offered into evidence. There is construction along the side of the road which appears to represent a widening of that road. The pavement is average, with some stretches where small pockmarks and potholes in the pavements can be seen, along with stretches of smooth road. For the most part, the film shows a "two lane blacktop" with some middle turn lanes at intersections.

It is important to emphasize that Rule 134.6 sets out the parameters under which additional payment for trips to and from healthcare providers will be provided. It does not require that certain routes be used if an injured worker prefers to take another route. However, the measure by which the right to obtain payment for travel is the "shortest route," just as the rate paid is that which is paid to state employees. Rule 134.6(a)(2). This is an objective standard which may be applied to workers across the state. To alter the plain language of the rule as the claimant suggests to "shortest reasonable route" injects subjectivity into the rule

which would essentially vary the right to reimbursement depending upon what the individual determined was "reasonable." Taken to its logical conclusion, a "reasonable" route could be that which would allow an injured worker to accomplish errands other than his/her doctor's appointment. Reimbursement for such a trip would clearly be beyond what the Texas Workers' Compensation Commission intended. Voluntarily taking a longer route does not trigger a right to reimbursement.

Although the claimant cites Texas Workers' Compensation Commission Appeal No. 990125, decided March 5, 1999, as support for adopting a "shortest reasonable route" approach, that is not what that case held; rather, in that case, the claimant persuaded the hearing officer that the route proposed by the self-insured did not constitute the shortest route because many of the streets did not hook up to each other in actual practice, although they appeared to intersect on a computer map tendered by the self-insured. Thus, the Appeals Panel agreed that the shortest route also had to be a direct route. In the case under consideration here, there was no contention that the route proposed by the self-insured was not also the most direct.

Accordingly, we affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge