

APPEAL NO. 001190

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 May 4, 2000. The issue was whether the appellant (claimant) was entitled to travel expenses for medical treatment from Dr. B from February 5, 1999, through February 21, 2000. The claimant and the respondent (carrier) stipulated that during that time the claimant traveled 25,510 miles to receive medical treatment from Dr. B. After a CCH held in April 1999, another hearing officer rendered a decision that the claimant was not entitled to reimbursement for travel expenses to receive medical care from Dr. B. The claimant appealed. In Texas Workers' Compensation Commission Appeal No. 990862, decided June 7, 1999, the Appeals Panel reversed that decision and rendered a decision that the claimant is entitled to \$3,399.20 in travel expenses. The carrier appealed that decision to a court in the county of residence of the claimant. The court held that since payment for travel to receive medical care is a medical benefit and not an income benefit, it did not have subject matter jurisdiction and the appeal by the carrier should have been filed in Travis County, Texas. The carrier appealed. At the time of the CCH, a decision had not been rendered by a court of appeals. The hearing officer stated that she did not agree with Appeal No. 990862, *supra*, and that she would not follow it. She concluded that the claimant is not entitled to reimbursement for travel expenses for medical treatment at the direction of Dr. B from February 5, 1999, through February 21, 2000. The claimant appealed, stated that Appeal No. 990862, *supra*, is binding since it has not been overturned by a court, urged that the hearing officer abused her discretion in not abiding with Appeal No. 990862, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that he is entitled to reimbursement for the travel expenses as requested. The carrier responded, urged that the Appeals Panel exceeded its authority in rendering Appeal No. 990862, stated that it disputed the mileage reimbursement requested by the claimant, and requested that the decision of the hearing officer be affirmed.

DECISION

We reverse the decision of the hearing officer and render a decision that the claimant is entitled to reimbursement for travel expenses to receive medical treatment from Dr. B from February 5, 1999, through February 21, 2000.

Section 410.205(b) provides "The decision of the appeals panel regarding benefits is binding during the pendency of an appeal" The parties in the dispute and the disputed issue in the case before us are the same as in Appeal No. 990862. At the CCH, the parties had the right to present evidence and to make arguments so that appellate rights could be exercised after the decision of the hearing officer was received. However, since Appeal No. 990862 is binding during the pendency of the appeal filed by the carrier, the hearing officer did not have the discretion of not following the law set forth in Appeal No. 990862. In addition, the carrier has not presented a convincing argument that the law set forth in Appeal No. 990862 should not be followed. The parties stipulated that the

claimant traveled 25,510 miles to receive medical treatment from Dr. B from February 5, 1999, through February 21, 2000.

We reverse the decision of the hearing officer and render a decision that the claimant is entitled to reimbursement for travel of 25,510 miles to receive medical treatment from Dr. B from February 5, 1999, through February 21, 2000.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

CONCUR IN THE RESULT:

I concur in the bottom line decision that claimant is entitled to reimbursement for travel expenses in this case. However, I do not agree that the prior Appeals Panel decision in Texas Workers' Compensation Commission Appeal No. 990862, decided June 7, 1999, is "binding during the pendency of the appeal." The Appeals Panel's decision in Appeal No. 990862 is binding on the parties regarding those facts only in that cause number only, while that particular case is being appealed. Appeal No. 990862 is not "binding" regarding any other case.

Section 410.205(b) provides that the decision of the Appeals Panel regarding benefits is binding during the pendency of an appeal. Section 410.207 provides that during judicial review of an Appeals Panel decision on any disputed issue relating to a workers' compensation claim, the Texas Workers' Compensation Commission (Commission) retains jurisdiction of all other issues related to the claim. The disputed issue is not the same in this case and Appeal No. 990862, because they involve different facts, different dates of travel, and a different case number. If the decision in Appeal No. 990862 was actually "binding" regarding the facts of this case during the pendency of the appeal of that case, that would mean that the Appeals Panel could not reconsider what the law should be in future cases involving the travel by this claimant. Section 410.205(b) would not prevent the Appeals Panel's reconsideration of the law of travel reimbursement, if we chose to reconsider.

I believe that the purpose of Section 410.205(b) is to make the parties understand that, just because they appealed an Appeals Panel decision, that does not mean that they do not have to comply with what the Appeals Panel decided in that particular case. I do not interpret Section 410.205(b) to mean that the law stated in Appeal No. 990862, *supra*, is locked in place regarding all future travel by this claimant. Instead, the reason the law is still the same as in Appeal No. 990862 is because the Appeals Panel has not retreated from or overruled the law stated in that decision.

I do agree, however, that in Appeal No. 990862, the Appeals Panel has stated what the law is regarding travel expense reimbursement. However, two different concepts are involved here.

On another issue, I note that the hearing officer, as a "lower court," should have followed the law as determined by the Appeals Panel. That is one reason why the Appeals Panel is in existence: to guide the lower levels of dispute resolution in the Commission. In my opinion, the concept of *stare decisis* applies, which means that "lower courts" follow the law established by "higher courts."

Judy L. Stephens
Appeals Judge