

APPEAL NO. 001519

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 000815, decided June 1, 2000, the Appeals Panel in part affirmed, reversed and rendered, and reversed and remanded the decision of the hearing officer with regard to the sole issue of whether the respondent (claimant) was entitled to reimbursement for mileage for medical treatment by Dr. M, Dr. A, Dr. K, Dr. S, Dr. B¹, and Dr. R. Specifically, we reversed and rendered a decision that the claimant was not entitled to reimbursement for travel to Dr. M's office. We affirmed the decision that the claimant was entitled to reimbursement for travel to Dr. A's and Dr. K's offices. We reversed and rendered a decision that the claimant was not entitled to reimbursement for travel to Dr. S's office. We reversed the determination that the claimant was entitled to reimbursement for travel to Dr. R's office calculated on a distance of 423 miles round trip and remanded for further development of the evidence and findings of fact as to the mileage for the "shortest route" between the claimant's residence and Dr. R's office. The hearing officer, did not conduct a hearing on remand but issued a new decision and order in which she purports to re-adjudicate issues contrary to our decision in Appeal No. 000815 and in which she again found that the shortest round-trip route to Dr. R's office was 423 miles. The carrier appeals, arguing that the hearing officer improperly decided matters already determined by the Appeals Panel and that the 423 round-trip mileage determination was against the great weight and preponderance of the evidence. The appeals file contains no response from the claimant.

DECISION

Reversed and a new decision rendered.

In Appeal No. 000815 we stated:

We reverse this determination awarding mileage for trips to Dr. R's office and remand for further consideration and development of the evidence to establish with some reasonable degree of specificity the mileage for the shortest route between the claimant's house and Dr. R's office.

The carrier submitted evidence from the state mileage guide that this distance was 356 miles. The claimant testified at the contested case hearing that the shortest route was 423 miles even though the uncontradicted testimony of the claimant was that she made detours to pick up relatives along the way. Nonetheless, the hearing officer said she found the claimant credible and more persuasive in establishing the shortest route. The issue was not so much the claimant's credibility because she testified that she deviated from the shortest route; rather our concern was for evidence of the shortest route. This testimony of the claimant can only support one finding: that the claimant's asserted 423 round-trip

¹The finding of nonentitlement for travel to Dr. B's office was not appealed.

mileage was not the shortest route. The hearing officer's finding to the contrary is so against the great weight and preponderance of the evidence as to be clearly erroneous and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). For this reason, we reverse Findings of Fact No. 3 to the extent that it deals with travel to Dr. R's office and No. 4 and render a decision, based on the only other evidence in the record, that the shortest round-trip route for this travel was 356 miles. The claimant is entitled to reimbursement for this round-trip mileage for eight visits to Dr. R for a total of 2,848 miles.

We also reverse those portions of Finding of Fact No. 3 which are contrary to our decision in Appeal No. 000815, and we reform Conclusion of Law No. 3 by deleting the references to Dr. M and Dr. S. See Section 410.251 *et seq.* As reformed, Conclusion of Law No. 3 is as follows: "Claimant is entitled to reimbursement of travel expenses for medical treatment provided by Drs. A, K, and R at the current travel rate for state employees." We also render a new decision that the claimant is entitled to reimbursement for travel to Dr. R for 356 miles round trip for eight visits for a total of 2,848 miles at the current travel rate set for state employees.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

DISSENTING OPINION:

I dissented in Texas Workers' Compensation Commission Appeal No. 000815, decided June 1, 2000, because I believed that we should have affirmed the decision of the hearing officer. Seeing no reason to reverse then, I see no reason to reverse now. I would affirm the decision and order of the hearing officer.

Gary L. Kilgore
Appeals Judge