APPEAL NO. 001600

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 June 5, 2000. The hearing officer determined that the respondent (claimant herein) is entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. W from September 30, 1999, through February 5, 2000, for a total sum of $758.24. The appellant (carrier herein) files a request for review, arguing that the claimant lived in the same city as Dr. W and that it should not be responsible for the claimant's travel to Dr. W when the claimant traveled to the city in which he practices for other reasons in addition to treating with Dr. W. The appeals file does not contain a response from the claimant.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarizes the evidence and we adopt his rendition of the evidence. We will only touch on the evidence directly germane to the appeal. This included testimony by the claimant that she lived in (city 1), Texas. The carrier presented evidence to show that the claimant lived in (city 2), Texas. The claimant did testify that she often traveled to city 2 for a number of reasons, including grocery shopping and to see her mother. It was undisputed that Dr. W was the claimant's treating doctor and that his office is in city 2.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6) states, in pertinent part:

> (a) When 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. The reimbursement shall be based on the following guidelines:
>
> (1) the mileage shall be greater than 20 miles, one way, to entitle the injured employee to travel reimbursement; [and]
>
> (2) reimbursement shall also be paid based upon the current travel rate for state employees. The shortest route between two points shall be used[.]

The carrier argues on appeal that the evidence shows that the claimant lived in Dallas and that the hearing officer misplaced the burden of proof on the carrier to establish where the claimant lived. The carrier also argued that it should not be liable for the

claimant's travel to city 2 when she had a number of reasons to travel to city 2 in addition to seeing Dr. W.

The issue as to where the claimant resided at the time of her travel to Dr. W is a factual question. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no error in the hearing officer's finding that the claimant resided in city1 and we do not have any reason to believe that the hearing officer misplaced the burden of proof.

While there was evidence that the claimant traveled to city 2 for reasons other than her visit to Dr. W, there is no "dual purpose" exclusion in Rule 134.6 and we do not have the authority to read any such provision into the rule. *See* Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999)

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge