

APPEAL NO. 001632

On June 16, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issue of whether the appellant (claimant) is entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. C by deciding that the claimant is not entitled to reimbursement of travel expenses for chiropractic treatment at the direction of Dr. C, the claimant's treating doctor. The claimant requests that the hearing officer's decision be reversed and that a decision be rendered in his favor. The respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The claimant testified that he sustained a right elbow strain at work on _____, and that he chose Dr. C as his initial choice of treating doctor. He said that Dr. C provides chiropractic treatment for his injury and has referred him to Dr. F and Dr. D. The claimant said that he considers Dr. C to be his family doctor. The claimant treated with Dr. C for a prior work-related injury. Drs. C, F, and D diagnosed the claimant as having lateral epicondylitis of the right elbow and Drs. F and D gave the claimant injections in his elbow. A nerve conduction study of the claimant's upper extremities showed no definite evidence of abnormality. It is undisputed that the one-way mileage on the shortest route from the claimant's home to Dr. C's office is 21.1 miles. The claimant said that he is requesting travel reimbursement for travel to Dr. C's office. HH, the carrier's case manager for the claimant's workers' compensation claim, testified that he researched the availability of chiropractors that were closer to the claimant's home than is Dr. C and that he found that there are at least 10 chiropractors that are less than 20 miles from the claimant's home who accept workers' compensation patients and who provide chiropractic treatment comparable to the treatment the claimant receives from Dr. C and who refer patients to medical doctors when necessary.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6) provides that, 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, and that 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; (2) reimbursement shall also be paid based upon the current travel rate for state employees and the shortest route between two points shall be used; and (3) when travel involves food and lodging, these items will be based upon the current rate for state employees.

The hearing officer found that there were numerous other chiropractors between the claimant's home and Dr. C's office who were ready, willing, and able to provide chiropractic treatment such as the claimant was receiving, under workers' compensation insurance, such that it was not reasonably necessary for the claimant to travel beyond 20 miles to receive treatment, and that it was not reasonably necessary for the claimant to travel to Dr. C's office to obtain appropriate and necessary chiropractic treatment from Dr. C. The hearing officer concluded that the claimant is not entitled to reimbursement of travel expenses for chiropractic treatment at the direction of Dr. C, the claimant's treating doctor.

In Texas Workers' Compensation Commission Appeal No. 000500, decided April 14, 2000, the Appeals Panel affirmed a hearing officer's decision that the injured employee was not entitled to reimbursement for travel expenses where the employee's initial choice of treating doctor was a chiropractor whose office was 38 miles from the employee's home and the hearing officer found that the employee did not sustain her burden of proving that travel in excess of 20 miles one way was reasonably necessary to secure medical treatment. The Appeals Panel stated that the question of whether the employee had demonstrated entitlement to reimbursement for travel expenses under Rule 134.6 was a question of fact for the hearing officer and that the claimant had the burden of proof on that issue. In Texas Workers' Compensation Commission Appeal No. 000467, decided April 13, 2000, which also involved an issue of reimbursement of travel expenses to see an initial treating doctor, the Appeals Panel stated that "the plain language of the rule [Rule 134.6] requires the claimant prove, and that findings be made, on the reasonable necessity of the travel, as opposed to only addressing whether the treatment received as a result of the travel was reasonable and necessary medical treatment." *Compare* Texas Workers' Compensation Commission Appeal No. 93952, decided December 1, 1993, where the Texas Workers' Compensation Commission (Commission) approved the employee's request to change treating doctors, the carrier did not dispute the order approving the change, and the Appeals Panel affirmed the hearing officer's decision that the carrier had to reimburse the employee for his travel expenses to obtain reasonable and necessary medical treatment from the doctor approved by the Commission.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established by the evidence presented. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The claimant's contention that it was reasonably necessary for him to travel to Dr. C's office because he had to travel 21.5 miles one way to be examined by Dr. CU, a required medical examination doctor, is not persuasive because the carrier must pay the reasonable travel expenses for a required medical examination under Rule 126.6(j), which references Rule 134.6 regarding travel expense specifications.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Susan M. Kelley
Appeals Judge