

## APPEAL NO. 001726

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 22, 2000. The hearing officer determined that the compensable injury sustained by the appellant (claimant) on \_\_\_\_\_, does not extend to an injury to the cervical, thoracic, or lumbar spine; that the claimant is entitled to reimbursement of travel expenses for travel to the required medical examination by Dr. F; and that the claimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. WP, from July 26, 1999, through February 29, 2000, because that treatment pertained to the claimant's neck and back complaints which do not result from the \_\_\_\_\_, compensable injury. The claimant has appealed the travel reimbursement determination, contending that Dr. WP also treated his compensable left foot injury and thus that he is entitled to reimbursement for his travel for those treatments. The respondent (carrier) asserts in response that no medical reports reflect that Dr. P treated the claimant's injured foot but rather show that four other doctors treated the foot, and that Dr. P's testimony that he did treat the foot was not binding on the hearing officer.

### DECISION

Reversed and a new decision rendered.

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable injury. The claimant testified that while working in a foundry on \_\_\_\_\_, he lost his balance on a mold platform and fell down three to four feet with his left heel landing on a steel railroad tie buried in sand. He said the company nurse referred him to Dr. JB for treatment of his left foot. Dr. JB's records reflect that he treated the claimant conservatively for plantar fasciitis. The claimant said he was not improving and that after two visits to Dr. JB, he saw his family doctor, Dr. C, who referred him to Dr. SB, an orthopedic surgeon. Dr. SB's July and August 1998 records reflect that he treated the claimant's left foot conservatively, including injections, and recommended surgery. Other medical reports indicate that Dr. SB performed surgery (heel spur removal and plantar fascial release) on the claimant's left foot on February 16, 1999; that a post-operative report indicated no apparent reduction in the heel spur; that post-operative therapy was not approved until April 15, 1999; that the claimant continued to have pain; and that the claimant had additional surgery on the foot on May 12, 1999.

The claimant further testified that he commenced treatment with Dr. WP and Dr. MP, who are associated in their practice, and that on each visit he received not only treatment for his neck and back injuries but also treatment for his injured foot including ice to reduce swelling and stretching exercises. As he put it, "its always been all three together," referring to Dr. WP's treatments of his foot, neck, and back. He also said that Dr. WP refers him to Dr. E for the prescription of medications and referred him to Dr. M for the casting of his foot.

Dr. MP wrote on July 9, 1999, that the delay in authorizing post-operative therapy for the claimant contributed to the poor remodeling of the soft tissue in his foot and that the claimant was referred to Dr. M who placed the foot in a plastic cast in an effort to get the underlying soft tissue to remold. Dr. WP reported on November 17, 1999, that the claimant still had a lot of pain in his foot and that he receives passive therapies to his foot including stretching exercises as well as back and neck adjustments and that he will continue to see the claimant three times a week until his foot pain is resolved.

Dr. L, a podiatrist who evaluated the claimant's injured foot on \_\_\_\_\_, reported that post-operative x-rays showed that the claimant still has some bone spur; that the clinical exam shows that he has a hard tissue mass on the plantar aspect of his injured foot; and that he has severe pain, apparently caused by an entrapped medial calcaneal nerve. Dr. L's assessment included plantar fasciitis with heel spur syndrome, soft tissue mass, and entrapped medial calcaneal nerve with possible entrapped lateral and medial plantar nerve. Dr. L recommended that the claimant continue with his physical therapy and orthotic devices, and said that the claimant may need more surgery.

Dr. WP testified that he has been seeing the claimant three times a week not only for his neck and back problems but also for post-operative rehabilitation to this injured foot with stretching. Dr. WP also stated that "what we are doing now [for the foot] is along the lines of physical therapy as outlined by the podiatrist for post-surgical care."

The hearing officer states in both Conclusion of Law No.3 and in the decision that the "[c]laimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of [Dr. WP] from July 26, 1999, through February 29, 2000, because that treatment pertains to Claimant's neck and back complaints which do not result from the \_\_\_\_\_, compensable injury."

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb a challenged factual determination of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We are satisfied that the great weight of the evidence establishes that the claimant's travel to Dr. WP and Dr. MP for treatment during the period in issue was for treatment of the compensable injury in addition to the neck and back. The carrier did not take issue at the hearing with the claimant's evidence showing the dates of each visit and the 85 miles round trip calculation. See *generally* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6).

The decision and order of the hearing officer is reversed insofar as it determines that the claimant is not entitled to reimbursement of travel expenses for medical treatment by or at the direction of Dr. WP for his compensable injury and a new decision and order is issued that he is so entitled.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge