APPEAL NO. 002562

Following a contested case hearing held on October 5, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by concluding that the appellant (claimant) is not entitled to reimbursement for travel expenses. The claimant has appealed, asserting, in essence, that his evidence sufficiently proved that his travel from his residence in (city 1), Texas, to (city 2), Texas, a distance of 350 miles one way, for treatment by Dr. W was reasonable and necessary. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged legal conclusion and certain underlying factual findings.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury. The claimant does not dispute findings that his treating doctor since July 24, 1996, has been Dr. W; that Dr. W's office is located in city 2; and that the claimant's travel to city 2 from city 1 is a distance of some 350 miles one way. The claimant does challenge findings that he initially lived in the city 1/(city 3) area and at some undetermined point moved to city 2; that the type of care the claimant received from Dr. W is available locally; and that his travel to city 2 from city 1 was not reasonably necessary.

The claimant testified that his compensable injury was to his left knee; that he underwent knee construction operations by Dr. B, an orthopedic surgeon; that Dr. B eventually told him to begin seeing a family practitioner for follow-up care; and that he then began treatment with Dr. W, traveling a distance of approximately 70 miles from his home near city 3 to city 2 where Dr. W practiced. In evidence is the claimant's Employee's Request to Change Treating Doctors (TWCC-53) reflecting that his request to change treating doctors from Dr. B to Dr. W was approved on July 24, 1996. The claimant stated that at some time in 1997, he moved from near city 3 to city 1 to help his aging parents, and that approximately once a month he has been traveling to city 2, a distance of 350 miles one way, to see Dr. W, who essentially provides him with renewal prescriptions for his medications and examines him. The claimant said that for some period of time the carrier reimbursed his travel to see Dr. W, but that at some point the adjuster asked him to try to find a doctor closer to where he resided; that he did see Dr. P in (city 4) on two occasions; that he could not understand Dr. P and they did not get along; and that Dr. P asked him not to return. He said he then called some other doctors in city 4 but they did not take workers' compensation patients. Describing his efforts to find a doctor closer to his residence, and agreeing that (city 5) is closer than city 2, the claimant stated, "I tried a little bit but I didn't try all that hard." The claimant further testified that he was requesting reimbursement for his city 1 and to city 2 round trips between August 1997 and May 2000, explaining that he is disabled and unable to work, draws Social Security benefits, and lets

his travel reimbursement claims accumulate for three years or so "to make it worth something."

The carrier introduced its adjuster's letter of July 25, 1997, which it mailed to the claimant in city 1. The letter stated that in a telephone conversation on July 7, 1997, the adjuster advised the claimant that because of his move from city 3 to city 1, it was not reasonable for him to continue to treat with Dr. W; that they agreed that it would be more reasonable for him to find another doctor closer to his new address; and that they agreed that the latest date for this change to take place is August 1, 1997. The claimant did not controvert the terms of this letter memorializing the conversation. The carrier also introduced into evidence its letter to the claimant dated August 19, 1997, stating that since the claimant has decided to continue treating with Dr. W, the carrier will pay for his medical benefits but will not reimburse his travel expenses.

The version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6) which governs the claimant's travel expense claim (since amended for dates of travel on or after July 15, 2000) provides in subsection (a) that when it becomes reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary medical care for the compensable injury, the reasonable cost shall be paid by the carrier. Whether it was reasonably necessary for the claimant to travel to city 2 to obtain medication refill prescriptions and have his reconstructed knee examined was a question of fact for the hearing officer to resolve. It is the hearing officer who is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As an appellate reviewing body, the Appeals Panel will not disturb the 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 and we do not find it so in this case. 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 note that the travel reimbursement request in this case does not involve an approved change of treating doctor uncontested by the carrier or a change of treating doctor request agreed to by the carrier and is thus distinguishable from our decisions in Texas Workers' Compensation Commission Appeal No. 93952, decided December 1, 1993; and Texas Workers' Compensation Commission Appeal No. 93361, decided June 23, 1993, where the carriers were liable for the travel expenses. *And see* Texas Workers' Compensation Commission Appeal No. 960561, decided May 1, 1996.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge