APPEAL NO. 010805
FILED JUNE 4, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 27, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth, fifth, and sixth quarters; that he has permanently lost entitlement to SIBs because he has not been entitled to SIBs for four consecutive quarters; and that he is not entitled to reimbursement of his travel expenses incurred in receiving treatment from Dr. VB. The claimant has appealed these determinations for insufficiency of the evidence. Concerning the travel expense reimbursement issue, the claimant contends that the respondent (self-insured) reimbursed his round-trip mileage to Dr. VB from the date of his injury, _____, to January 1998, following the effective date of the new Rule 134.6 (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §134.6), when the self-insured summarily stopped the mileage reimbursements without requesting a benefit review conference (BRC). The self-insured's response details how the evidence sufficiently supports the challenged determinations.

DECISION

Affirmed.

The hearing officer did not err in finding that during the three qualifying periods at issue (the fourth quarter qualifying period commenced on January 7, 2000), the claimant did not attempt in good faith to obtain employment commensurate with his ability to work, and in concluding that the claimant is not entitled to SIBs for the fourth, fifth, and sixth quarters. The claimant, age 64, testified that after hurting his back at work on _____, when he missed the bottom rung on a ladder and stumbled, he continued working until his retirement on January 29, 1999, after 36 years with the employer, and that he did not work until June 2000 when his neighbor hired him to work at the neighbor's thoroughbred horse ranch as a "ramrod" (foreman) for $960.00 per month. The hearing officer did not find credible the claimant's testimony concerning his being actually employed by the neighbor nor did the hearing officer find in the claimant's medical records a narrative report from a doctor which specifically explained how the claimant's back injury caused his total inability to work during the qualifying periods (or parts thereof) before starting the "ramrod" job. Further, the hearing officer also found that the report of Dr. WB constituted a record that shows that the claimant is able to return to work. *See* 408.142 and Rule 130.102(d)(4) concerning the requirements for establishing entitlement to SIBs.

The hearing officer did not err in determining that the claimant has permanently lost entitlement to SIBs. In a Decision and Order signed on February 9, 2000, and in a Decision and Order signed on June 2, 2000, other hearing officers determined that the claimant was not entitled to SIBs for the second and third quarters, respectively. Since we affirm the hearing officer's determination in this case that the claimant is not entitled to

SIBs for the fourth, fifth, and sixth quarters, the provision of 408.146(c) apply. That statute provides that an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury.

The hearing officer did not err in determining that the claimant is not entitled to reimbursement of travel expenses for medical treatment by Dr. VB or at his direction. The claimant testified that after he injured his back, he commenced chiropractic treatment with Dr. VB, whose office was near (less than 20 miles) the claimant's place of employment; that he would attend these treatment sessions on his way home from work; and that the self-insured reimbursed him for mileage to Dr. VB's office from April 1997 until January 1998. The claimant's position at the BRC was that he is entitled to reimbursement for 24,820 miles. The claimant introduced copies of mileage request forms on the letterhead of his chiropractic clinic in (city 1), Texas, reflecting 154 round trips of 170 miles each (26,180 miles) to see Dr. VB between January 7, 1998, and October 9, 2000. The claimant indicated that he lives seven miles from (city 2), Texas, which has a population of approximately 300 and he also mentioned the city of (city 3), Texas.

Rule 134.6(a), as amended effective December 1, 1992, provided that "[w]hen 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." This rule's guidelines include a provision that the mileage shall be greater than 20 miles, one way, to entitle the injured employee to travel reimbursement. Rule 134.6 was amended effective July 15, 2000. The amended Rule 134.6(a) provides as follows:

> When it becomes reasonably necessary for an injured employee to travel in order to obtain reasonable and necessary medical care for the injured employee's compensable injury, the injured employee may request reimbursement from the insurance carrier by submitting a request to the carrier in the form, format, and manner required by the [Texas Workers' Compensation] Commission.

The amended Rule 134.6(b) provides that an injured employee is entitled to reimbursement for travel expenses only if medical treatment is not reasonably available within 20 miles of the injured employee's residence; the distance traveled to secure medical treatment is greater than 20 miles one-way; and the injured employee submits the request to the insurance carrier in the form and manner prescribed by the Commission within one year of the date the injured employee incurred the expenses.

The claimant had the burden to prove that his requests for travel expense reimbursements met the requirements of the applicable version of Rule 134.6. In Texas Workers' Compensation Commission Appeal No. 951913, decided December 27, 1995, the Appeals Panel affirmed the decision of a hearing officer that the employee was not entitled to reimbursement of travel expenses for 86 round trips of 270 miles each to see his treating doctor for hot pack applications and other treatment of his lumbosacral sprain.

Our decision noted that that case did not involve a change to another treating doctor, either approved by the Commission or undisputed by an insurance carrier. We also observe that the case we now consider did not involve treatment by a referral doctor. The hearing officer found that it was not reasonably necessary for the claimant to travel approximately 170 miles round trip for chiropractic care by Dr. VB or at his direction in order to obtain appropriate and necessary medical care for the compensable injury.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that the challenged determinations are not 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).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge