

APPEAL NO. 010878

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 March 13, 2001. With regard to the only issue before him, the hearing officer determined that the appellant (claimant) was not entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. P pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6).

The claimant appealed, contending that Dr. P had been approved as the treating doctor and that there was no reasonable medical care available within 20 miles of the claimant's residence. The claimant asserts that the closest appropriate medical care was in (City 4), Texas, and that was more than 20 miles from her residence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a pipe fitter helper. The hearing officer, in an unappealed finding, determined that the claimant sustained a compensable injury on _____ (all dates are 2000 unless otherwise noted), when she tripped and injured her left knee while working in (City 1), Texas. The claimant began treating with Dr. H, who performed surgery on March 22 in City 1. The claimant subsequently moved from City 1 to (City 2), Texas. The claimant continued to treat with Dr. H for a period of time (entitlement to travel expenses for that treatment was the subject of Texas Workers' Compensation Commission Appeal No. 010879, decided May 23, 2001, and will not be repeated here). For reasons mentioned in Appeal No. 010879, the claimant sought to change treating doctors. After making one call to a chiropractor, who did not offer the type of physical therapy that the claimant needed, in City 2, the claimant changed treating doctors to Dr. P, a chiropractor, in (City 3), Texas, based on the recommendation of a friend who had a total knee replacement. The claimant's request to change treating doctors was approved by the Texas Workers' Compensation Commission (Commission) on July 24.

The claimant is claiming reimbursement for travel expenses to see Dr. P for 10 round trips between September 8 and October 13. The claimant contends that there was no doctor who could give her the type of therapy she needed in City 2 and the closest city where she could get the necessary care was City 4, which was more than 20 miles from the claimant's residence in City 2. The claimant contends that since any doctor who could provide the necessary care was more than 20 miles away from her residence, she is entitled to see Dr. P in City 3, which is about 112 miles away from her residence in City 2.

The hearing officer cites the amended Rule 134.6 applicable to all dates of travel on or after July 15. In Texas Workers' Compensation Commission Appeal No. 010522-S,

decided April 18, 2001, we noted the effective date of the amended Rule 134.6 and commented that the prior Rule 134.6 simply required that travel expenses for medical treatment be “reasonably necessary . . . to obtain appropriate and necessary medical care” Under that rule, if the carrier had not disputed the change of treating doctor, it lost the right to dispute travel expenses to go to that doctor. The new amended version adds a requirement in Rule 134.6(b), which states:

- (b) An injured employee is entitled to reimbursement for travel expenses only if:
 - (1) medical treatment for the compensable injury is not reasonably available within 20 miles of the injured employee's residence[.]

As the claimant points out in her appeal, when Rule 134.6 was being considered for amendment, there was a suggestion that the 20-mile threshold be increased but that the Commission declined to increase the limit. We do not read that comment as abrogating the reasonably necessary provisions of Rule 134.6 to allow any distance if the 20-mile limitation cannot be met. The entire rule emphasizes what is reasonable and necessary. We agree with the hearing officer's interpretation of Rule 134.6 that reasonable and necessary medical care was reasonably available in City 4 and there were a number of other cities closer to the claimant's residence than City 3, however, the hearing officer should have made findings specifically addressing whether or not there was medical treatment reasonably available within 20 miles of the claimant's residence. See Rule 134.6(b)(1).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

CONCURRING OPINION:

I concur because I think the decision may be affirmed on a basis other than that found by the hearing officer: because the evidence indicates that the claimant actually

went to a chiropractor within 20 miles of her residence and therefore failed to carry the burden of proof that medical treatment was not reasonably available within 20 miles of the injured employee's residence, as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6). The rule makes no provision for the situation where such medical treatment may prove to be subjectively dissatisfactory to the injured worker.

The hearing officer, however, did not correctly state a basis for denying mileage to the extent he indicated that one is somehow confined to the nearest large city for medical treatment. Rule 134.6, which applies in this case, frankly makes no provision for evaluating whether the desire to seek treatment in a city which is not the nearest is itself "unreasonable." Thus, however unreasonable the hearing officer felt it was to seek treatment (Texas Workers' Compensation Commission (Commission)-approved treatment in this case) over 100 miles away rather than the closest city which was still over 20 miles away, he was without discretion to move outside the stated rule and engraft such a requirement into it. See Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999). While that may be an amendment to Rule 134.6 that the Commission may wish to consider in the future, they have not thus far done so.

Susan M. Kelley
Appeals Judge