APPEAL NO. 010879

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 30, 2000. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 002932-S, decided January 31, 2001, remanded the case for the hearing officer to admit and consider all exhibits which were properly and timely exchanged and to allow the appellant (claimant) to testify consistent with her position at the benefit review conference. A CCH on remand was held on March 13, 2001. The hearing officer determined that the claimant was not entitled to reimbursement of travel expenses for medical treatment pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6).

The claimant appealed, contending that travel expenses for follow-up care by Dr. H, her treating doctor and surgeon at the time in (City 1), Texas, were reasonable and necessary as were subsequent trips to see Dr. P, a chiropractor, in (City 3), Texas. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

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. The claimant began treating with Dr. H, who performed surgery on March 22. Subsequently the claimant moved from City 1 to City 2, Texas, a distance of about 168 miles. The claimant testified that she continued to go back to City 1 for follow-up care from Dr. H. The claimant testified, and submitted some documentation, that she saw Dr. H four times on April 28, June 9, June 23, and July 7. The claimant testified that she did not seek a referral from Dr. H to a doctor closer to where she lived in City 2, although she apparently saw a chiropractor for physical therapy in another town close to where she lived in City 2.

The claimant said that she stopped seeing this doctor because he was too rough and Dr. H said that the doctor was undoing his treatment. At some point in July, the claimant, dissatisfied with Dr. H's treatment, requested a change of treating doctor from Dr. H to Dr. P in City 3. The distance from Dr. P's office in City 3 to claimant's residence in City 2 was about 112 miles. The claimant is alleging 11 round trips to Dr. P's office between July 26, and September 5.

The hearing officer cites Rule 134.6, both as it was prior to July 15, and as amended after July 15, emphasizing "reasonably necessary" travel to obtain "appropriate and necessary medical care." The hearing officer commented that it "was not reasonably necessary for the claimant to travel from [City 2] to [City 1] to obtain her reasonable and

necessary medical care," as there was medical assistance in City 4, Texas, and other locations closer to City 2 than City 1. While that may be so, the hearing officer (and carrier) ignored a line of Appeals Panel decisions which have consistently held that if the carrier agrees to a treating doctor or a change of treating doctor, the travel expenses to reach that doctor are appropriately awarded. Texas Workers' Compensation Commission Appeal No. 950990, decided August 4, 1995, and cases cited therein. Similarly, travel expenses are appropriate where a claimant's request for change of treating doctor is properly authorized by the Texas Workers' Compensation Commission, although the change is disputed by the carrier. Texas Workers' Compensation Commission Appeal No. 951928 decided December 27, 1995, and cases cited therein. There is no evidence that the carrier had disputed Dr. H as the treating doctor and consequently travel expenses to return to City 1 for the claimant to get the follow-up treatment with Dr. H, who had performed the surgery, are appropriate. We reverse so much of the hearing officer's decision which determines that the claimant was not entitled to reimbursement of travel expenses from City 2 to City 1 for medical treatment by Dr. H prior to July 15, and render a new decision that the claimant is entitled to those travel expenses. (The claimant alleges that was for four round trips or 1,340.8 miles at 28 cents per mile or $375.42).

Rule 134.6 was amended to apply 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 the doctor. The new amended version adds a requirement in Rule 134.6(b), which states:

> (a) 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[.] [Emphasis added]

The hearing officer made clear in his discussion that he found that there was medical treatment for the compensable injury reasonably available closer to the claimant's residence than doctors in City 1 or City 3, even though that medical treatment was more than 20 miles from claimant's residence. That position is supported by the evidence. We affirm the hearing officer's decision that the claimant is not entitled to reimbursement of treatment after July 15 to City 1 or City 3.

The hearing officer's decision and order are affirmed in part for travel on or after July 15, 2000, and we reverse and render a new decision that claimant is entitled to reimbursement of travel expenses incurred to see Dr. H in City 1 prior to July 15, 2000.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

CONCURRING OPINION:

I concur fully with the reversal; as far as the affirmance goes, 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 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 (which is also beyond 20 miles one-way). 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." Subsection (b) of that rule is specific as to when the right to reimbursement attaches. I cannot read subsection (a) to confer the broad discretion on the hearing officer to somehow pick and choose where an injured worker may seek medical treatment. 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. It is up to the Commission employees who approve the change of doctor requests to perform more than a mere ministerial action and to be proactive in ascertaining if closer medical treatment may be found.

Susan M. Kelley
Appeals Judge