

APPEAL NO. 011574
FILED AUGUST 23, 2001

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 May 15, 2001. The hearing officer determined that the respondent (claimant) was entitled to reimbursement of travel for medical treatment at the direction of the claimant's treating doctors.

The appellant (carrier) asserts on appeal that the hearing officer erred in determining that the claimant was entitled to travel reimbursement for medical treatment and that the hearing officer erred in not making a finding of fact regarding the amount of travel reimbursement. The claimant did not file a response.

DECISION

Reversed and a new decision is rendered.

At issue in this case is whether the claimant is entitled to reimbursement of travel expenses for medical treatment at the direction of the claimant's treating doctors, Dr. S, Dr. L, and Dr. SH.

The claimant testified that he sustained a compensable injury to his back on _____. The claimant selected Dr. S as his treating doctor, and Dr. S referred the claimant to Dr. L for spinal surgery. The claimant testified that he had undergone his first surgery in June 2000, and a second surgery in August 2000. During the surgery, two veins were cut and Dr. SH was called in to surgically repair the veins. After the surgery, the claimant experienced swelling and required follow-up treatment by Dr. L and Dr. SH. The claimant testified that he visited Dr. S for physical therapy on a daily basis in December 2000. The claimant testified that each of the doctor's offices were more than 20 miles away from his residence, regardless of any short routes agreed upon by the claimant and the carrier's adjuster. On January 8, 2001, the claimant submitted a Request For Travel Reimbursement (TWCC-48) for mileage (917.6 miles) for traveling to and from the doctors' offices for medical treatment between August 8, 2000, to January 2, 2001. (Claimant's Exhibit No.1.) In addition, the claimant requested reimbursement for parking expenses incurred in traveling. On January 15, 2001, the carrier denied the claimant's TWCC-48 and based its denial for travel reimbursement as follows:

Carrier disputes entitlement to mileage reimbursement as per appeals panel decision from 7-15-00. Mileage is not reasonable and/or necessary. There are other physicians within a 20 mile radius that could provide the same/similar treatment for employee's injuries.

At the CCH, the carrier presented a list of doctors, specifically orthopedic surgeons, as evidence of medical treatment reasonably available within 20 miles of the claimant's residence. (Carrier's Exhibit No. 1.) The claimant testified that he was notified by letter of a Texas Workers' Compensation Commission (Commission) rule change regarding travel reimbursement; however, he did not see a reason to change treating doctors after the surgery and he did not know that "the law" had changed regarding travel reimbursement. The hearing officer made a finding of fact that "[w]hile medical treatment was available within 20 miles of Claimant's residence, it would not have been reasonable for Claimant to change doctors after his surgery for follow-up care regarding the surgery," and the hearing officer determined that the claimant was entitled to travel reimbursement.

Effective July 15, 2000, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6) provides that:

- (a) 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 Commission.
- (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[.]

* * * *

- (e) This rule shall apply to all dates of travel on or after July 15, 2000. [Emphasis added.]

The carrier contends that since the claimant's travel dates are after July 15, 2000, the hearing officer misapplied the statutory requirements for travel reimbursement pursuant to Rule 134.6. Under the new Rule 134.6, effective July 15, 2000, the claimant must show that his medical treatment was not reasonably available within 20 miles. In reviewing the record, we note that there were no medical reports nor documentation in evidence to support the claimant's contention that post-surgery follow-up care by his treating doctor was reasonably necessary, when there was evidence in the record of reasonably available medical treatment within 20 miles of the claimant's residence. (We note that such evidence from the treating doctors might have sufficed but was not presented.)

The claimant's testimony does not support entitlement to travel expenses when medical treatment was reasonably available within 20 miles of the claimant's residence. Although the claimant testified that he had a patient-doctor relationship with Dr. S for over two years and that he believed another doctor would not treat him for post-surgery follow-up care, the claimant's testimony alone is not sufficient to overcome the requirements of Rule 134.6. Regarding the claimant's contention that he did not know "the law" had changed regarding travel reimbursement, ignorance of the law, or in this case Rule 134.6, is not an excuse or defense for noncompliance. Texas Workers' Compensation Commission Appeal No. 001090, decided June 29, 2000.

Also, the evidence does not support the hearing officer's determination that it would not have been reasonable for the claimant to change doctors after his surgery for follow-up care, when the only issue in dispute was travel expenses incurred for medical treatment, not change of treating doctors. In reviewing the record, we note that the carrier did not dispute the medical treatment or medical expenses of the treating and referral doctors, but only disputed the travel expenses incurred by the claimant for medical treatment over 20 miles from the claimant's residence.

We note that under the old Rule 134.6 (prior to July 15, 2000), the Appeals Panel held that "if the carrier had not disputed the change of treating doctor it lost the right to dispute travel expenses to go to the that doctor." See, *generally*, Texas Workers' Compensation Commission Appeals Panel No. 010522-S, decided April 18, 2001. Also the "question of whether the claimant had demonstrated entitlement to reimbursement for travel expenses under Rule 134.6 was a question of fact for the hearing officer." See, *generally*, Texas Workers' Compensation Commission Appeal No. 002547, decided December 6, 2000; Texas Workers' Compensation Commission Appeal No. 002562, decided December 11, 2000.

The hearing officer's decision and order are reversed and a new decision rendered that the claimant is not entitled to reimbursement for travel expenses for medical treatment at the direction of Dr. S, Dr. L, and Dr. SH between August 8, 2000, and January 2, 2001.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

CONCUR IN THE RESULT:

Philip F. O'Neill
Appeals Judge