APPEAL NO. 030631
FILED MAY 1, 2003

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 December 17, 2002. The hearing officer determined that the respondent (claimant) is entitled to travel expenses for medical treatment from November 30, 2001, through June 5, 2002. The appellant (carrier) appeals the determination on legal and sufficiency of the evidence grounds. The claimant did not file a response.

DECISION

Reversed and rendered in part and affirmed in part, on other grounds.

It is undisputed that the claimant sustained a compensable injury to his lumbar spine on _____. The claimant received treatment for his condition from numerous medical providers, including Dr. P, Dr. A, Dr. L, Dr. Ka, Dr. Ky, and (Hospital). The claimant's travel reimbursement request also indicates that he received treatment from Dr. R and Dr. D.

On January 8, 2001, the claimant underwent spinal surgery, including a fusion with hardware. He began physical therapy several weeks later. When he began moving and flexing his back, the claimant experienced severe pain that radiated down his right leg. He testified that his doctor gave him pain medication and advised him to "go home and let the condition run its course." The claimant then changed treating doctors and began treating with Dr. P, a chiropractor. Dr. P provided conservative chiropractic care, and referred the claimant to Dr. Ka, an orthopedic surgeon. Dr. Ka eventually determined that the claimant's fusion was unsuccessful and the hardware had become unstable. Dr. Ka performed another spinal surgery on August 27, 2002, to remove the cage and re-fuse the previous level, as well as an additional level that had been damaged. The claimant continued to receive treatment following the second surgery.

As shown in the carrier's billing summaries, the carrier did not dispute the medical treatment provided by Dr. L, Dr. Ka, Dr. Ky, and the Hospital, for which travel reimbursement is sought. Likewise, the carrier did not dispute the medical treatment provided by Dr. A on December 10, 2001, and Dr. P from November 30, 2001, through February 1, 2002, and February 11 through February 22, 2002. The carrier did dispute medical treatment provided by Dr. A after December 10, 2001. In a report dated March 26, 2002, the carrier's peer review doctor opined that continued manipulative care is not supported beyond May 8, 2001. The carrier, then, disputed Dr. P's chiropractic treatment from February 5 through February 7, 2002, and from February 27 through May 31, 2002, for which travel reimbursement is sought. There is no evidence that the carrier disputed medical treatment provided by Dr. R or Dr. D.

The carrier argues on appeal that the hearing officer erred in determining that the claimant is entitled to travel expenses for medical treatment from November 30, 2001, through June 5, 2002, because the claimant did not establish that he actually traveled to each of the medical providers listed on the claimant's travel reimbursement request during the period in question. We note that the hearing officer, in an attempt to focus the issue, asked the carrier whether it disputed that the claimant traveled on the dates alleged in the reimbursement request. The carrier answered, "We're saying that, yes, he traveled on those dates." The carrier then clarified that there were a few listings where no corresponding medical records had been submitted. Notwithstanding, after some discussion, the carrier stated:

> I think we can limit the issue and most likely stipulate and agree on the mileage from [claimant's] home to the different providers. We can also agree that absent a few days, which are not very significant, that [claimant] did travel on these dates. The issue is going to be whether or not that treatment was reasonable and necessary and thus he's entitled to reimbursement.

Additionally, our review of the record indicates that the question of whether the claimant actually traveled on the dates alleged was not actually litigated. Accordingly, the carrier waived the argument, and we will not address it for the first time on appeal.

The hearing officer erred in determining that the claimant's medical treatment was reasonable and necessary, thereby entitling him to travel expenses for medical treatment from November 30, 2001, through June 5, 2002. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6(a) (Rule 134.6(a)) provides, "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]." We have said that there is a distinction between the reasonableness and necessity of medical care for compensable injury and the reasonableness and necessity of travel to receive that care. Texas Workers' Compensation Commission Appeal No. 961842, decided November 1, 1996. Determinations regarding whether the medical care is reasonable and necessary are the function of the Division of Medical Review pursuant Chapter 413 of the 1989 Act. Appeal No. 961842; and Texas Workers' Compensation Commission Appeal No. 002547, decided December 6, 2000. The hearing officer's determination, therefore, constitutes legal error and is, hereby, reversed.

Because the carrier did not dispute the medical necessity of the claimant's treatment under Dr. L, Dr. Ka, Dr. Ky, and the Hospital, we affirm that the claimant is entitled to travel reimbursement for these providers from November 30, 2001, through June 5, 2002. Likewise, the claimant is entitled to travel reimbursement for Dr. A on December 10, 2001, and Dr. P from November 30, 2001, through February 1, 2002, and February 11 through February 22, 2002. In the absence of any dispute with regard to

Dr. R and Dr. D, we affirm that the claimant is entitled to reimbursement for travel to and from these providers. Pending resolution of the carrier's dispute of the reasonableness and necessity of medical treatment, we render a decision that the claimant is not entitled to travel reimbursement for Dr. A after December 10, 2001, and Dr. P from February 5 through February 7, 2002, and from February 27 through May 31, 2002. Should the Division of Medical Review find the disputed treatment reasonable, the question of the carrier's liability for reimbursement for the corresponding travel expenses may be again presented and a defense raised in a new proceeding.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge