APPEAL NO. 081683
FILED JANUARY 21, 2009

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 commenced on August 14, 2008, with the record closing on October 20, 2008. With regard to the three disputed issues before her, the hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on December 1, 2006, that the claimant's impairment rating (IR) is four percent and that the claimant is entitled to reimbursement for travel expenses in the amount of $20.65.

The appellant (self-insured) appeals all the hearing officer's determinations, contending that the claimant reached MMI on July 17, 2007, with a one percent IR as assessed by the designated doctor and that the claimant is not entitled to reimbursement for travel expenses. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

It is undisputed that the claimant, a payroll and data specialist, sustained an injury on _____, when she slipped going down a stairwell and injured her left ankle. The parties stipulated that on _____, the claimant sustained a compensable injury. The parties also stipulated that "the designated doctor, [Dr. JK], certified that the claimant reached [MMI] on July 17, 2007, with a zero percent impairment" and that "the treating surgeon, [Dr. K], certified that the claimant reached [MMI] on December 1, 2006, with a four percent whole person impairment."[1]

MMI/IR

The hearing officer's determinations that the claimant reached MMI on December 1, 2006, and that the claimant's IR is four percent are supported by the evidence and are affirmed.

[1] The hearing officer in Finding of Fact No. 3 found that Dr. K certified that the claimant reached MMI "on the statutory date of December 1, 2006" with an IR of four percent. The self-insured's appeal notes that the hearing officer's finding that Dr. K certified that the claimant reached MMI on the statutory date of December 1, 2006, "is incorrect as a matter of law." In actuality, Dr. K marked on his December 1, 2006, Report of Medical Evaluation (DWC-69) that the claimant reached clinical MMI on December 1, 2006, and the parties stipulated that Dr. K certified that the claimant reached MMI on December 1, 2006.

TRAVEL REIMBURSEMENT

28 TEX. ADMIN. CODE § 134.6 (Rule 134.6), applies to all dates of travel on or after July 15, 2000.[2] Rule 134.6(a) provides that for dates of travel on or after July 15, 2000, 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 carrier by submitting a request to the carrier in the form, format and manner required by the Texas Department of Insurance, Division of Workers' Compensation (Division). The hearing officer, in the Background Information portion of her decision comments:

> The credible evidence reflects that the Claimant went to the [City 1] of [Dr. P] clinic near her home on July 27, 2005. However, she was informed that the doctor was seeing patients at his [City 2] office that day. Claimant called the adjuster to ask if she could see the doctor in [City 1] rather than [City 2]. She was instructed to keep her appointment in [City 2] by the adjuster . . . . However, it is clear from the evidence that the Claimant could have followed-up with [Dr. P] in the [City 1] office near her home after her initial appointment in July.

Although there is some conflicting evidence regarding who actually referred the claimant to Dr. P, who the treating doctor was at the time, and the claimant's conversation with the adjuster, the hearing officer, as the sole judge of weight and credibility to be given to the evidence (Section 410.165(a)) could certainly believe the scenario set out in her comment. Rule 134.6 only requires that when it becomes reasonably necessary to travel in order to obtain reasonable and necessary medical care for the 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 Division. Rule 134.6(b) provides that 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;
>
> (2) the distance traveled to secure medical treatment is greater than 20 miles, one-way; and
>
> (3) the injured employee submits the request to the insurance carrier in the form and manner prescribed by the [Division] within one year of the date the injured employee incurred the expenses.

It is undisputed that the claimant was referred to Dr. P for treatment of the compensable injury and that the claimant submitted a request for reimbursement to the

[2] Rule 134.6 was superceded by Rule 134.110 adopted effective May 2, 2006, and applies to all dates of travel on or after May 2, 2006. The dates of travel at issue here are July 27, 2005, August 23, 2005 and October 7, 2005, therefore, we apply Rule 134.6.

self-insured on a Request for Travel Reimbursement (DWC-48) form within one year of the date the claimant incurred the expense. In evidence is the DWC-48 which requested reimbursement for travel expenses incurred by the claimant for mileage on July 27, 2005, August 23, 2005 and October 7, 2005. The question was whether treatment was reasonably available within 20 miles of the claimant's residence. The hearing officer determined that for the July 27, 2005, visit that the self-insured's adjuster had specifically required the claimant to see Dr. P at his City 2 location. However, medical treatment for the compensable injury was clearly available within 20 miles of the claimant's residence as evidenced by the hearing officer's comment that the claimant could have followed up with Dr. P in the City 1 office near her home after her initial appointment in July. While the claimant may have been misinformed by, and detrimentally relied on, the adjuster's direction, the claimant nonetheless does not qualify for reimbursement for travel expenses under Rule 134.6. The Division is limited to ordering reimbursement for travel expenses only in the circumstances established in Rule 134.6(b). That is, in order for the Division to order reimbursement for travel expenses in this case the claimant would have had to demonstrate that "medical treatment for the compensable injury is not reasonably available within 20 miles of the injured employee's residence." Appeals Panel Decision 040876, decided May 21, 2004. The claimant made no effort to make such a showing in this case and, as such, the hearing officer erred in determining that the claimant is entitled to reimbursement for travel expenses in the amount of $20.65 for the July 27, 2005, travel. Accordingly, we reverse the hearing officer's determination that the claimant is entitled to reimbursement for travel expenses in the amount of $20.65 and render a new decision that the claimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of the treating doctor for visits on July 27, 2005, August 23, 2005 and October 7, 2005.

SUMMARY

We affirm the hearing officer's determination that the claimant reached MMI on December 1, 2006, and that the claimant's IR is four percent. We reverse the hearing officer's determination that the claimant is entitled to reimbursement for travel expenses in the amount of $20.65 (for a July 27, 2005, doctor visit to Dr. P) and render a new decision that the claimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of the treating doctor for visits on July 27, 2005, August 23, 2005 and October 7, 2005.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Veronica L. Ruberto
Appeals Judge

_____
Margaret L. Turner
Appeals Judge