

APPEAL NO. 950164

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 21, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer to consider the single issue of whether respondent (claimant) is entitled to reimbursement of travel expenses for medical treatment by and at the direction of (Dr. S). The hearing officer determined that claimant is entitled to reimbursement for travel expenses for reasonable and necessary medical treatment from Dr. S. However, the hearing officer determined that the preponderance of the evidence failed to establish that claimant is entitled to reimbursement for travel expenses for physical therapy. Appellant's (carrier) appeal challenges the determination that it must reimburse travel expenses for treatment with Dr. S. Two timely responses were filed on appeal, one by claimant's attorney and one by claimant himself, which urge affirmance on the basis of the sufficiency of the evidence. Claimant did not appeal the determination that the carrier was not required to reimburse travel expenses for therapy and that decision has become final pursuant to Section 410.169. We note that both carrier and claimant in their appeals attached exhibits which were not offered below. It is well settled that the Appeals Panel is limited to considering the record developed at the hearing (Section 410.203); thus, we did not consider the exhibits offered for the first time on appeal in making our decision.

DECISION

We affirm.

The facts in this case are largely undisputed. Claimant sustained a compensable back injury on (date of injury). Dr. S, an orthopedic surgeon in (city), has treated claimant from the date of injury. Dr. S's treatment has included two back surgeries. The initial surgery was a laminectomy and fusion. On October 18, 1994, claimant underwent a re-fusion, which included re-instrumentation and anterior grafting. In August 1994, due to his deteriorating financial condition and specifically the foreclosure on his home, claimant relocated 163 miles from (city) to (city), Texas. In addition, claimant testified that he does not think that he would be able to find another orthopedic surgeon to take over his complicated case, because Dr. S recently performed surgery. Finally, claimant testified that he would not be comfortable going to a new doctor unfamiliar with his medical history and course of treatment.

Claimant's Exhibit No. 2 is a letter from Dr. S dated November 11, 1994, which provides in relevant part:

This patient's type of surgery with laminectomy and fusion with instrumentation is a very specialized type of service in which pedicle screws rods and crosslinks are placed in the patient's spine at the time of surgery and need to be closely monitored during the recuperative period and monitored closely during any type of rehabilitation and therapy.

* * * *

It is my opinion it is reasonable and necessary that this patient continue follow-up with this office, and I believe it would have compromised his care to change to a physician who was not fully aware of what was seen at the time of surgery, and what the expectations and progression of recovery would be realistic.

Carrier argued at the hearing that, although claimant was entitled to treat with Dr. S, it was not required to reimburse the claimant for travel expenses because claimant voluntarily relocated to (city) and because treatment and therapy was available at a location closer to (city). However, as the hearing officer noted, the carrier did not offer any evidence identifying orthopedic surgeons located closer to (city) who were available to take over treatment. In addition, as claimant emphasized at the hearing, when carrier selected a doctor to conduct the second opinion evaluation prior to the October 1994 surgery, it selected (Dr. P), who is also located in (city) despite the fact that claimant was living in (city) at the time of the appointment.

Under the provisions of Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6), "[w]hen it becomes reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary medical care for the injured employee's compensable injury, the reasonable cost shall be paid by the insurance carrier." In this instance, the hearing officer determined that claimant is entitled to reimbursement for travel expenses for reasonable and necessary medical treatment with Dr. S. In Texas Workers' Compensation Commission Appeal No. 93239, decided May 14, 1993, the Appeals Panel affirmed a hearing officer's determination that a claimant was entitled to reimbursement for travel expenses for follow-up treatment with the neurosurgeon who performed his back surgery, where he had moved to another city some 250 miles away to have his family's help during his recuperation. In Texas Workers' Compensation Commission Appeal No. 93952, decided December 1, 1993, the Appeals Panel determined that where a claimant had complied with the statutory requirements for changing a treating doctor, a carrier, who had not challenged the change of treating doctor, was "liable for [claimant's] travel reimbursement when he travels to obtain reasonable and necessary medical care from his treating doctor for his compensable injury." See also Texas Workers' Compensation Commission Appeal No. 93441, decided July 16, 1993 (Appeals Panel reversed and remanded determination that claimant was not entitled to reimbursement for travel expenses for treatment with treating doctor, noting that change was effectuated in compliance with the statute and that the carrier had not disputed the change.). We believe that the hearing officer's determination that claimant is entitled to travel reimbursement in this case is supported by sufficient evidence and no basis exists for disturbing that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge