APPEAL NO. 961395

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 June 12, 1996 in (city), Texas, with (hearing officer) presiding as hearing officer. With respect to the issues before him, the hearing officer determined that the respondent (carrier) is not liable to the appellant (claimant) and his wife for various reimbursement requests. In his appeal, the claimant challenges the constitutionality of the 1989 Act and also requests that we reverse the hearing officer's decision and order and enter a new decision that the carrier is liable for the requested reimbursement. In its response, the carrier urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on (date of injury), when, in the course and scope of his employment as a driver for (employer), he was struck by a hit-and-run driver. The claimant testified that he injured his back, neck, hip, kidney area and head in the accident and that his eyeglasses were broken.

Initially, we note that, as an administrative agency, we are without the authority to determine the constitutionality of a statute; therefore, we cannot reach the claimant's constitutional arguments. Texas State Board of Pharmacy v. Walgreen Texas Co., 520 S.W.2d 845, 848 (Tex. Civ. App.-Austin 1975, writ ref'd n.r.e.); *see also* Texas Workers' Compensation Commission Appeal No. 951960, decided January 3, 1996; Texas Workers' Compensation Commission Appeal No. 951542, decided October 25, 1995; Texas Workers' Compensation Commission Appeal No. 92124, decided May 11, 1992. We note, however, that in Texas Workers' Compensation Commission v. Garcia, 893 S.W.2d 504 (Tex. 1995), the Texas Supreme Court rejected several constitutional challenges to the 1989 Act.

In his appeal, the claimant argues, as he did at the hearing, that the carrier had waived its right to contest reimbursement in this instance because the hearing was not held within 60 days of the benefit review conference (BRC) as is required in Section 410.025(b) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.6(a)(1) (Rule 142.6(a)(1)). We find no merit in this assertion. Once the carrier requested the BRC and the hearing, it had discharged its obligation under the 1989 Act with respect to contesting the claimant's reimbursement requests. As the hearing officer noted, the failure of the Texas Workers' Compensation Commission (Commission) to schedule the hearing within the established time limits does not affect the legal rights of either party.

Although the delay in this instance is regrettable, there is simply no basis for holding the carrier responsible for scheduling matters that were wholly outside its control.

The claimant requests mileage reimbursement for a trip from his home in City 1, Texas, to City 2, Texas, to pick up his initial temporary income benefits check. The claimant asserts that he did not timely receive that check and, because he was in need of the money, his wife, Ms. M, contacted the carrier to attempt to expedite payment. The carrier's adjuster apparently refused to send the check by overnight mail, but told Ms. M that they could drive to City 2 to pick up the check. Ms. M testified that the claimant had to pawn a collector's edition knife for gas money for that trip. In addition, the claimant seeks mileage reimbursement for two trips to a Commission field office, one for an appointment with an ombudsman prior to the BRC and a second to attend the BRC. The hearing officer correctly determined that the 1989 Act and the Commission's Rules do not provide for the requested reimbursement. In the absence of a provision authorizing such reimbursement, the hearing officer was without the authority to order it; therefore, the hearing officer did not err in declining to order reimbursement for these expenses.

The claimant also seeks reimbursement for photocopying expenses incurred in preparation for the BRC so that he could exchange his evidence with the carrier. Neither the 1989 Act nor the Commission's Rules provide for a party's recovery of costs associated with preparation for dispute resolution hearings and conferences from the other party; therefore, we perceive no error in the hearing officer's denial of this request.

Next, we consider the claimant's request to recover the expense of long distance telephone calls to schedule doctor's appointments. As with the other expenses incurred by the claimant for which he seeks reimbursement, there is simply no authority in the statute or the Rules for ordering the carrier to reimburse this type of expense. To the contrary, the only reimbursement authorized is travel expense reimbursement in Rule 134.6. Accordingly, the hearing officer did not err in denying reimbursement of the long distance expenses.

The claimant further requests reimbursement for his wife's personal time for driving him to medical appointments. Both the claimant and his wife acknowledged that they had received travel expense reimbursement from the carrier for these trips pursuant to Rule 134.6; however, they sought to recover for Ms. M's time at $10 per hour, plus 10% interest over and above the travel expense reimbursement. Such reimbursement is not authorized in the statue or the Commission's Rules and we perceive no error in the denial thereof. Given that the requested reimbursement is not authorized, the hearing officer correctly determined that the carrier did not have any liability for interest on the amount of the alleged reimbursement.

The claimant also seeks to recover the cost of his eyeglasses which were broken in the accident. The hearing officer determined that the claimant did not sustain an eye injury in the (date of injury), compensable injury and that, as a result, the carrier was not liable for the cost of replacing the claimant's eyeglasses. In Texas Workers' Compensation Commission Appeal No. 931132, decided January 26, 1994, the claimant made a request for recovery of the cost of new contact lenses, arguing that her contact lenses had been damaged by the exposure to fumes at work. The Appeals Panel did not resolve the issue of reimbursement because the issue was not raised at the hearing. Nonetheless, Appeal No. 931132 states that "since the claimant sustained no injury to her eyes there is no basis under Section 408.021(a) to conclude that new contact lenses are reasonably required by the nature of the injury, that is, the RADS condition which is a respiratory condition and not an eye injury." That reasoning is equally applicable in this case. In this case, there is no assertion that the claimant sustained an eye injury and, as such, his eyeglasses are not "health care reasonably required by the nature of the injury . . . ."

Finally, we note that to the extent that the claimant is arguing that he is entitled to reimbursement for the expenses he incurred because they were incidental to his pursuit of medical care, neither the hearing officer nor the Appeals Panel has the authority to resolve that dispute. The question of whether the incidental expenses alleged by the claimant in this instance could be considered "reasonable and necessary medical treatment" within the meaning of the 1989 Act is a question reserved to the jurisdiction of the Commission's Medical Review Division pursuant to Section 413.031.

Finding no error in the hearing officer's decision and order, we affirm.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Alan C. Ernst
Appeals Judge