

APPEAL NO. 010522-S

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 February 14, 2001. The hearing officer determined that the appellant (claimant) was entitled to reimbursement for travel expenses to obtain medical treatment on two occasions prior to July 15, 2000, but "is not entitled to travel expenses after July 15, 2000 because medical treatment . . . was reasonably available within 20 miles of her residence."

The claimant appealed on a number of factual and legal grounds contending that "all claims submitted prior to December 20, 2000, should be paid" because the respondent (carrier) had not timely or properly disputed the claims. The carrier responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back and left knee injury on _____, in (City 1). The claimant received treatment from her family doctor, who eventually advised her that she should see a specialist. The evidence is unclear how the claimant came to treat with Dr. Z, an orthopedic surgeon in (City 2). The parties stipulated that the Texas Workers' Compensation Commission (Commission) approved the claimant's request to change treating doctors from her family doctor in City 1 to Dr. Z in City 2 on December 17, 1996, and that the round-trip distance between the claimant's residence in City 1 and Dr. Z's office (and subsequently Dr. A) in City 2 was 310 miles. The hearing officer, in unappealed findings, found that the carrier had not disputed the Commission's approval of the change of treating doctors to Dr. Z in City 2 and that Dr. Z continued to be the claimant's treating doctor throughout this claim. The claimant testified, and the hearing officer found, that from December 1996 through May 2000 the carrier had paid the claimant's travel expenses to and from City 2 to receive treatment from Dr. Z. Dr. Z, on July 11, 2000, referred the claimant to Dr. A for treatment of her knee.

At issue in this case is travel on 10 occasions between June 15, 2000, and December 27, 2000, for medical treatment from Dr. Z and Dr. A (five visits each). The hearing officer found that the claimant was entitled to reimbursement for travel expenses for trips on June 15 and July 11, 2000.

Effective July 15, 2000, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (Rule 134.6), (which amends the old Rule 134.6) applies "to all dates of travel on or after July 15, 2000." The prior Rule 134.6 simply required that travel expenses for medical treatment be "reasonably necessary . . . to obtain appropriate and necessary medical care" Under that rule if the carrier had not disputed the change of treating doctor it lost the right to dispute travel expenses to go to that doctor. The new amended version adds a requirement in Rule 134.6(b), which states:

- (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[.]

The hearing officer found that the claimant was entitled to reimbursement for two trips prior to July 15, 2000, but that after that date the claimant had not shown that her required medical treatment was not reasonably available within 20 miles. The claimant admittedly had not sought treatment with any specialist in City 1 saying only that the doctors in City 2 spent more time with her than the doctors in City 1 would have done. The carrier put into evidence the Yellow Page listing of doctors in City 1 and the hearing officer took official notice of the Commission's Approved Doctors List. The hearing officer did not err in his findings.

The claimant appealed, arguing, among other things, that the carrier was required to pay or deny "the payment within 45 days of receipt of the request for reimbursement" pursuant to Rule 134.6(d) and that certain Dispute Resolution Information System notes "prove" that the requests for reimbursement were received by the carrier "before Dec 20-2000." This matter was only inferentially raised at the CCH. We note that in the Preamble and public comment to Rule 134.6(d) the question was raised regarding any penalty in the event that a carrier does not comply with subsection (d) and the Commission response was that failure to comply with a Commission rule "is an administrative violation for which the Commission may pursue a number of enforcement actions." In any event, the facts of when the requests for reimbursement were made, when they were received by the carrier, and if they were timely disputed are unclear. The hearing officer commented that the claimant's allegations on this point were "unfounded and unsupported."

We have reviewed all of the claimant's other assertions and perceive no reversible error. Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge