

APPEAL NO. 060440-s
FILED MAY 2, 2006

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 January 23, 2006. The issue in this case was "[i]s the Claimant entitled to reimbursement of travel expenses for medical treatment for the period November 30, 2000, through October 23, 2004, and if so, what amount?" The hearing officer determined that the respondent (claimant) was entitled to reimbursement of travel expenses for medical treatment for the period November 30, 2000, through October 23, 2004, in the amount of \$14,995.01 as being "reasonable and authorized in accordance with [Texas Department of Insurance, Division of Workers' Compensation] Division [28 TEX. ADMIN. CODE § 134.6] Rule 134.6."

The appellant (carrier) in general appeals the hearing officer's decision and specifically challenges the finding regarding travel expenses for 9 of the 11 trips that are at issue in this case. The claimant filed an untimely response which will not be considered.

DECISION

Reversed and rendered in part and reversed and remanded in part and affirmed in part.

Undisputed are the hearing officer's comments in the Background Information portion of his decision that state that the claimant sustained a serious burn injury (at one point claimant was stated to have a 91% impairment rating) following a copper refinery explosion on _____, that the present case "concerns reimbursement of travel expenses for medical treatment," that the carrier does not dispute the medical treatment as being reasonable and necessary, that the carrier has "paid some travel expenses for each of the eleven trips" and that the dispute concerns the amount of the reimbursement. Also it appears undisputed that the claimant requires an attendant for either 24 hours a day or at least a substantial portion of the time. The 11 trips in question were during the four year period between November 30, 2000, and October 23, 2004. At the CCH, (NJ) who was identified as the claimant's wife, (although the evidence might indicate they were not married in 2000 and early 2001) testified. At the CCH the parties and the hearing officer made reference to a "three ring binder" which apparently contained copies of receipts, notes and other documentation. Although NJ referenced the binder in her testimony, the binder was never offered nor admitted into evidence. The hearing officer comments that the claimant's reimbursement requests for the 11 trips at issue was "reasonable and appropriate with two exceptions" and reduces the claimed reimbursement \$785.12 for the travel performed during the period of June 17 through June 22, 2003, and reduces the claimed reimbursement by \$406.85 for travel performed during the period of May 21 through May 23, 2003. The hearing officer

found that \$14,995.01 of claimed expenses, out of a total \$16,186.98 claimed expenses, to be reasonable and authorized by Rule 134.6.

Section 408.021(a) provides that, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed, and that the employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; (3) enhances the ability of the employee to return to or retain employment. 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 employer'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 Division. The injured employee is entitled to reimbursement for travel expenses only if the medical treatment is not reasonably available within 20 miles of the injured employee's residence, the distance traveled is greater than 20 miles one-way and 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. (There is no allegation that the claimant failed to submit the request within one year time frame.) Rule 134.6(c) goes on to state:

The insurance carrier shall reimburse the injured employee based on the travel rate for state employees on the date travel occurred, using mileage for the shortest reasonable route.

* * * *

When an injured employee's travel expenses reasonably include food and lodging, the carrier shall reimburse for the actual expenses not to exceed the current rate for state employees on the date the expense is incurred.

Rule 134.6 itself does not make provision for reimbursement of travel expenses to include food and lodging for a travel companion or spouse, rather it addresses travel expenses incurred by the injured employee. Appeals Panel Decision (APD) 951461, decided October 9, 1995, involved among other issues, travel expense reimbursement for meals for an injured employee and a spouse. Regarding the meal expense claim the Appeals Panel cited APD 94649 decided July 5, 1994, stating:

That case is instructive on the issue before us, namely in its underlying rationale that the statute and rule envision reimbursement of only the claimant's travel expenses to obtain medical treatment and not reimbursement of any expenses incurred by the spouse of a claimant, particularly where, as here, there is evidence that claimant could drive herself to the doctor's office. In this instance, the hearing officer determined that, on the basis of the evidence before him, he would only award \$12.50 per day for 10 trips, based upon his belief that any amount

above that figure was for meals consumed by claimant's husband, an expense carrier was not required to reimburse herein.

Based on the plain reading of Rule 134.6 and interpretation of APD 951461, *supra*, reimbursement for travel expenses, including food and lodging is only available for the injured employee. However, as implied in APD 951461, if special nursing or attendant care is required that expense might be paid as health care reasonably required by the nature of the injury. Whether NJ's travel expenses may be paid under some other provisions of the 1989 Act or Division rules are beyond the scope of the issue in this case.

At the CCH, the hearing officer made specific inquiries regarding the travel performed during October 20 through October 23, 2004, June 7 through June 10, 2004, March 8 through March 10, 2004, October 15 through October 18, 2003, and on November 30, 2000. The hearing officer specifically addressed the travel during June 17 through June 22, 2003, and May 21 through May 23, 2003, in the Background Information portion of his decision.

The claimant requests reimbursement of \$1,072.00 for expenses incurred by NJ for travel on November 30, 2000. The carrier's letter dated February 5, 2001, indicates all of the claimant's expenses were paid for that trip. Both the carrier's letter and testimony at the CCH indicated that the \$1,072.00 was for NJ's travel expenses. The carrier advised that it would "not pay for your companion to go for medical treatment with you." The hearing officer included the \$1,072.00 in the ordered travel expenses. First we note that there are no receipts showing exactly how the \$1,072.00 was calculated, nor is there any medical evidence which required an attendant. More importantly, as the carrier notes, Rule 134.6 does not provide for travel, food and lodging expenses for a companion and/or _____. We reverse the hearing officer's decision regarding this claimed travel reimbursement and render a new decision that the claimant is not entitled to the additional claimed \$1,072.00 travel expenses for the November 30, 2000, travel.

For the travel during October 20 through October 23, 2004, the difference between the amount paid \$591.42 (Claimant's Exhibit No. 2, pages 1 and 2) and the claimed \$660.39 is \$68.97. Although receipts are referenced in Claimant's Exhibit No. 3, pgs 1 and 2, and appear to have been acknowledged by the carrier (although carrier indicates several receipts are alleged to be illegible) none are in the record. The difference appears to be in the amount of meals claimed, \$138.87 versus meals paid \$65.19. (The claimant explained that he is not requesting fuel reimbursement). The hearing officer's decision allowing reimbursement of the claimed \$68.97 is not supported by the evidence. We reverse the hearing officer's determination that the claimant is entitled to reimbursement of \$68.97 and remand for the hearing officer to determine which receipts were submitted to the carrier and then determine the claimant's actual meal expenses which are not to exceed the then current rate for state employees (which was \$30.00 per day). The hearing officer may need to obtain additional information to address this portion of the remand.

For travel to (City 1) during June 7 through June 10, 2004, (Claimant's Exhibit No. 4) the claimant claims mileage for 797.6 miles (\$279.16), motels plus allowable taxes (\$315.18), and "[m]eals @ \$30.00 per day allowable for ea. person X 4 days" (\$240.00) for a total of \$834.34. The carrier disputes the necessity of travel as the travel was to the primary treating physician and "per the statute there are physicians within two hours travel. Carrier disputes motel expenses. Carrier notes no receipts presented for meals however disputes necessity. . . ." The carrier paid mileage for 232.06 miles at .35 mile for \$81.22 (See Claimant's Exhibit No. 3 page 3). We remand the case to the hearing officer for a determination of what receipts, if any, were provided to the carrier and a determination on the mileage allowance, hotel expense not to exceed a maximum of \$80 a day plus allowable taxes and meals not to exceed \$30.00 a day total (for the claimant), which was the maximum rate for state employees in October 2004. See Rule 134.6(c). The hearing officer had determined that the travel was "reasonable and appropriate."

The carrier appeals the hearing officer's decision regarding travel to (City 1) on July 17 through July 27, 2003, (Claimant's Exhibit No. 8) on the basis that an 11 day stay in (City 1) was not necessary, that the \$149.00 a night room charge was not reasonable, that claimant was not "entitled to double the State Employee Maximum for hotel charges," that the claimant's wife, who doubled as his attendant, "did not require a separate room" and disputing the car rental charge. The carrier complains in its appeal, that no receipts were provided, citing APD 991124, decided July 5, 1999. In evidence is an undated memo from the carrier's adjuster (Claimant's Exhibit No. 8 pg 1) referencing travel reimbursement for "trip on 7/17/03 to 7/27/03." In that memo the adjuster references named doctors and concludes that the "carrier will reimburse claimant for his visit" referring to the period of "7-21-03 to 7-23-03." The carrier then details how it has calculated the travel reimbursement. There is no evidence, nor any discussion at the CCH, other than the claimant's request for reimbursement regarding the other claimed dates i.e. July 17 to July 20, 2003, and July 24 to July 27, 2003. Regarding carrier's citation of APD 991124 that case dealt with Rule 134.6(a) prior to July 15, 2000, which required receipts pertinent to travel. The current Rule 134.6(a) for dates of travel on or after July 15, 2000, requires "submitting a request to the carrier in the form, format, and manner required by the [Division]." Request for Travel Reimbursement (DWC Form-48) is the required form to be used. On page 2 of that form is the direction to "attach any receipts for food and lodging, if applicable." Rule 134.6(c) provides that when an injured employee's travel expenses reasonably include food and lodging the carrier shall reimburse for the actual expenses not to exceed the current rate for state employees on the date the expense is incurred, which in this case would be \$80.00 per night plus allowable taxes and \$30.00 a day for meal expenses. Regarding the claimed travel expenses for the period of July 17 through July 27, 2003, we reverse the hearing officer's determination and remand the case to the hearing officer to ascertain what, if any, receipts were provided to the carrier, to apply the correct rates as set out in this decision and address the claimed car rental charges. The hearing officer may need to obtain additional information to address this portion of the remand. The hearing officer has previously determined that the travel was reasonable and appropriate and that determination is supported by the evidence.

The carrier appeals the hearing officer's determination regarding travel to (City 1) on March 8 through March 11, 2004 (See Claimant's Exhibit No. 5) solely on the basis that the claimant "again failed to present any receipts for recovery. . . . awarding the claimant meal reimbursement." (Mileage and motel expenses were not appealed.) In evidence is a memo dated July 1, 2004, from the claimant to the carrier which states "attached are receipts for expenses to and from (City 1) for [claimant] to go to the doctor." Further we note that Rule 134.6(c) provides that for food travel expenses, "the carrier shall reimburse for the actual expenses not to exceed the current rate for state employees on the date the expense is incurred." In March 2004 the rate for state employees was \$30.00 a day. We reverse so much of the hearing officer's decision that awards \$240.00 for "[m]eals at \$30.00 per day allowable for ea. Person X 4 days." We remand for the hearing officer to obtain evidence what receipts were submitted to the carrier and make a determination regarding actual expenses not to exceed the current rate for state employees which was \$30.00 a day. See Rule 134.6(c) and APD 951461, *supra*.

The carrier appeals the hearing officer's determination regarding travel on June 17 through June 22, 2003, mostly on the basis that the claimant is requesting lodging reimbursement for "double the State Employee Maximum" and lack of receipts citing APD 991124 *supra*. In evidence as Claimant Exhibit No. 9 pg 2 is a memo from the carrier's adjuster acknowledging travel on June 17 to June 22, 2003, and setting out how the carrier calculated the reimbursement. The hearing officer addressed travel during this period, excluded airfare for a minor child and reduced the requested meal and lodging expenses. We reverse so much of the hearing officer's determination that authorizes meal reimbursement at \$60.00 per day and remand for a determination of reimbursement for the injured employee's actual expenses not to exceed the rate for state employees of \$30.00 per day for the claimant. Likewise, we reverse the hearing officer's determination that the maximum authorized lodging reimbursement rate is \$160.00 a day, and remand for a determination of the injured employee's actual expenses not to exceed the current rate (at that time) for state employees which was a lodging rate of \$80.00 per day, plus allowable taxes. The hearing officer's implied determinations on the other miscellaneous expenses are supported by the evidence.

The carrier appeals the hearing officer's implied determinations for travel to (City 2) on June 9 through June 12, 2003, on the basis that the claimant is not allowed "to double the State Employee Maximum [for overnight lodging] to \$160.00 per night." (See Claimant's Exhibit No. 10.) We agree with the carrier's contention that the current rate for state employees in June 2003 (the date the expense was incurred) was \$80.00 per night plus allowable taxes for reasons stated previously. We reverse the hearing officer's implied determination that the claimant is entitled to reimbursement for travel expenses in the amount of \$1,617.26 and remand the case for specific determinations not inconsistent with this decision.

The carrier appeals the hearing officer's determination (as stated in the background discussion) for travel to (City 1) on May 21 through May 23, 2003, on the basis of the necessity of a two day stay. (Claimant's Exhibit No. 11). The hearing

officer in the Background Information addresses this travel, impliedly finds the travel reasonable and necessary in order to obtain medical care but reduces the lodging expense reimbursement to \$186.80 per day (based on \$160.00 per night plus allowable taxes). As previously stated, applying our interpretation of APD 951461, *supra*, and Rule 134.6(c) the allowable lodging reimbursement should be \$80.00 per night plus allowable taxes (\$93.40) and for the two night stay was \$186.80, taxes included. We reverse the hearing officer's implied determination regarding lodging reimbursement for two nights and remand the case for the hearing officer to make specific findings to include car rental, baggage help, parking etc.

The carrier appeals the hearing officer's implied determination regarding travel to (City 1) between April 30 and May 1, 2001, alleging that an overnight stay was not necessary and that there was no basis for requiring a rental car for the second day. See Claimant's Exhibit No. 12. The hearing officer had impliedly found this trip "reasonable and appropriate." That implied determination is supported by the evidence.

In conclusion we reverse the hearing officer's implied finding regarding NJ travel expenses on November 30, 2000, and render a new decision that the claimant is not entitled to the additional claimed \$1,072.00 claimed travel expenses on November 30, 2000. We reverse the hearing officer's implied determination that the claimant is entitled to an additional \$68.97 meal reimbursement for travel during October 20 through October 23, 2004, and remand for a determination what meal receipts were submitted to the carrier and make a determination on meal reimbursement expenses during the period of October 20 through October 23, 2004. We remand the case for the hearing officer to make specific determinations regarding the necessity of the claimed travel expenses for travel on June 7 through June 10, 2004, claimed meal expenses for travel March 8 through March 11, 2004, travel expense for the travel on July 17 through July 27, 2003, travel expenses for travel June 17 through June 22, 2003, for travel expenses June 9 through June 12, 2003, and travel expenses on May 21 through May 23, 2003. We affirm the hearing officer's implied determination for reimbursement for travel expenses for the April 30 through May 1, 2001, trip.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge