

## APPEAL NO. 92191A

On April 16, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She approved carrier's attorneys' fees of \$1,351.25. The carrier's attorney, appellant herein, asserts that the hearing officer did not allow sufficient preparation time and that the table in Tex. W. C. Comm'n, 28 Tex. Admin. Code § 152.4 (rule 152.4), does not refer to preparation time.

### DECISION

We affirm the decision on attorney's fees.

The hearing officer allowed a total of 11.75 hours of attorney time at the requested rate of \$115.00 per hour. One hour was allowed for initial time; two and one-half hours were allowed for the Benefit Review Conference; three hours were approved for the contested case hearing itself, in which appellant represented the insurance carrier in regard to a claim against it for benefits; and four hours and 15 minutes were allowed for meetings, reports, evaluation and discussion prior to the hearing. We note that the table of maximum hours found in rule 152.4 allows 1.5 hours for a contested case hearing and that the hearing officer has exceeded that guideline in her award.

The appeal first objects that no time was awarded to review the BRC decision with an adjuster. We note that the hearing officer allowed the hour requested in the preceding entry for "[i]nterview (GW) to prepare for CCH & strategy discussion with adjuster." (emphasis added). Insofar as preparation for the hearing with the adjuster is concerned, the hearing officer allowed the time requested. The hearing officer could conclude that the entry in question, "[r]eview BRC decision & lawsuit with adjuster", in the context of the previous entry, was either subsumed by the that entry or was beyond the purview of billable entries demonstrated to be justified for this case. (See rule 152.4[c]) The decision to grant none of the one hour solicited was reasonable and not arbitrary.

Next, the appeal lists two entries variously described as preparation for the hearing. One, on April 15, asks for 2.5 hours to "consult with W of V. Prepare for CCH." The hearing officer awarded one hour for this entry; we note that in the first issue on appeal, time was also allowed for "[i]nterview (GW) to prepare for CCH . . ." We do not find that an award of one hour for this entry is unreasonable. The next entry that is part of this contention reads, "[m]eet with (DH) and (GW) from V to prepare for testimony at CCH. Prepare post-CCH report for adjuster." The decision of the hearing officer on the claim itself shows that (DH) was a witness at the hearing. While appellant states that rule 152.4 does not refer to preparation time, we note in the table of maximum hours, after "Resolving Disputes of Compensability or Amount of Payment," that this statement is made, "(includes research and preparation time)." Therefore preparation time is to be included within the total hours allowed for various segments of the dispute resolution process including the contested case hearing. While a hearing officer could allow additional time to interview witnesses, an interview of only one witness described in an entry that also addressed two other topics in

a total of 1.5 hours does not suggest that it was unreasonable to deny time for this entry. The hearing officer could appropriately consider that the amount of time to interview this witness fell within the general preparation time allowed. As to time to meet with (Mr. W), other entries have allowed time with him. Preparation of a post-CCH report for an adjuster does not address either the standard relating to "preserve the client's interest" or "complexity" of the issues. We will not overturn the hearing officer's decision in awarding no time for these two topics.

Finally, the appellant takes issue with no time allotted for two hours requested to prepare exhibits for hearing. In his appeal, reference is made to copying and marking exhibits. No allegation is made in regard to collecting or obtaining the exhibits. While it was laudable to mark these exhibits, the acts for which attorney time are requested could be viewed as endeavors not billable for an attorney. In addition, as described, this entry does not meet the standards expressed for hours greater than as listed in the table of maximum hours--marking exhibits does not preserve the client's interest or address the complexity of the case. The decision of the hearing officer to award no hours for this entry is reasonable and not arbitrary.

The decision of the hearing officer is affirmed in all parts.

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Joe Sebesta  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Susan M. Kelley  
Appeals Judge