

## APPEAL NO. 92372

On June 16, 1992, a contested case hearing was held in (city), Texas, in regard to attorney's fees as provided by the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992), and Tex. W. C. Comm'n, 28 Tex Admin Code § 152.3(f) (Rule 152.3(f)). The hearing officer, (hearing officer), decided that the application for attorney's fees of (Mr. W) did not comply with requirements of applicable rules, set a payment order aside, and provided that another application may be filed. The carrier was relieved of any duty to withhold attorney's fees pending resubmission. (Mr. W) asserts that there was no jurisdiction to have the June 16th hearing because the claimant did not comply with Rule 152.3(f). (Mr. W) also said that the hearing officer erred in her findings of fact and conclusions of law because he personally supervised everything listed on his affidavit and the decision was against the great weight and preponderance of the evidence.

### DECISION

We affirm.

Appellant did not attend the hearing of June 16, 1991. The hearing officer personally talked by telephone to a representative of the office of (Mr. W) (recorded on the tape of the hearing) and learned that he would not attend the hearing but that a motion had been mailed. The hearing officer stated that no motion had been received and verified that with other members of that field office. The hearing officer then asked the representative to send a copy of such motion for her consideration. The motion states that the hearing was not timely requested and that a copy of the request for hearing was not sent to appellant. We also note, however, that no affidavits or any other evidence are presented with appellant's motion. No evidence was presented on behalf of appellant at the hearing.

The hearing officer admitted as hearing officer exhibits an order for attorney's fees dated 5-14-92 and a paper dated 5-19-92 which states, "claimant unhappy with fees. Says attorney never did anything. Says he never met (Mr. W). Wants CCH.," signed (illegible). The dates on these two documents are within the time period of seven days, set forth in Rule 152.3, for requesting a hearing. In addition, the Appeals Panel has ruled that a pro se claimant may request a contested case hearing in any manner. See Texas Workers' Compensation Commission Appeal No. 92329 (Docket No. redacted) decided August 2, 1992. Based on the evidence of record, there is no basis to rule that the hearing in question should be dismissed. The evidence shows that claimant did comply with Commission rules, as stated. Appellant's assertion on appeal that the hearing lacked jurisdiction is without merit.

We do not find error in the findings of fact or conclusions of law, and the decision was not against the great weight and preponderance of the evidence. Evidence of record adequately supports all findings of fact. However, these findings did not result in a decision to reduce attorney's fees or to impose Commission guidelines for maximum hours based on

lack of justification for more time. The hearing officer used those findings of fact, which referred to limited work done by the attorney, work done by others in his office, and the absence of clarification by the attorney through his absence from the hearing, as a basis to set aside the order on attorney's fees. Since the order that was set aside was based on the attorney's affidavit (which did not comply with Rule 152.3 specifying that hours requested by different providers of legal services be set forth), the hearing officer's order allowed the appellant to resubmit his request in conformity with Commission rules.

The hearing officer's decision is affirmed.

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Joe Sebesta  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Philip F. O'Neill  
Appeals Judge