

APPEAL NO. 92381

On March 25, 1992, a contested case hearing was held in (city), Texas, as provided by the Texas Workers' Compensation Act of 1989 (1989 Act) TEX. REV. CIV. STAT. ANN. arts 1.01 through 11.10 (Vernon Supp. 1992), to consider whether the claimant, (claimant), had disability and had reached maximum medical improvement. The decision in that case was against claimant, but was appealed. The Appeals Panel remanded the case for consideration of evidence offered by claimant but not previously admitted. After claimant's attorney and carrier's attorney agreed that the additional documentary evidence plus the record developed before were sufficient, the hearing officer, without additional testimony, decided the case on July 2, 1992, in favor of the claimant. The hearing officer approved attorney's fees of \$675.00 for claimant's attorney. He appeals, asserting that the amount is insufficient.

DECISION

We affirm.

The hearing officer allowed a total of 4.5 hours, of 11 hours requested, by claimant's attorney at the requested rate of \$150.00 per hour. No time was requested in conjunction with a benefit review conference. The one hour requested for preparation for the hearing in March was granted in full. Similarly the two hours requested for the hearing in March were granted in full. The hearing officer only allowed .5 hour in preparation for the subsequent hearing on remand which became a hearing officer's consideration of documentary evidence not previously admitted. One hour was allowed for the appeal of the decision in the March hearing.

The approval of attorney's fees in this instance is governed by Article 8308-4.09 of the 1989 Act and Tex W. C. Comm'n, 28 Tex Admin Code § 152.1 through 152.5 (rules 152.1-152.5). Rule 152.4 provides guidelines for maximum hours and provides that an attorney may request more hours "but must demonstrate to the satisfaction of the commission that the higher fee was justified by the effort necessary to preserve the client's interest, or the complexity of the legal and factual issues involved." This rule provides that the maximum time for a hearing is 1.5 hours and for appellate review is one hour. We note that the hearing officer allowed the maximum for appellate review and more than the maximum for the March hearing (3.0 hours), while allowing .5 hours for the subsequent "hearing" based on review of added evidence. In sum the hearing officer allowed the maximum or more than the maximum set forth by the applicable rule.

Unlike Texas Workers' Compensation Commission Appeal No 91014 (A) (Docket No. redacted) decided September 20, 1991, wherein the Appeals Panel was concerned that the hearing officer had not considered the affidavit of the attorney, in this case evidence that the affidavit was considered is evident by the hearing officer's writing on the face of it: "No explanation or justification for hours claimed beyond guidelines." The initials of the hearing officer follow.

The appealing attorney states that the amount he was granted should be compared to the larger amount allowed the carrier's attorney. He adds that the basis for his hours is obvious on its face and also asserts that the unequal pay for similar work violates the United States Constitution and the Texas Constitution.

We agree with the hearing officer's note that no justification appears on the affidavit of the claimant's attorney for hours in excess of the guide for maximum hours. For instance, in the area for appellate action, claimant's attorney only notes "4-19-92 research response 3.00" and "4-19-92 prepare response 3.00." The five hours not allowed in this area are the bulk of time in contention. (We note that while claimant's attorney says he claimed 13 hours and multiplies that figure by \$150.00, his own submission actually totals only 11.00 hours.) In contrast to the affidavit in question, the affidavit of the carrier's attorney provides extensive detail as to why additional hours were worked. The hearing officer did approve the amount requested, as justified, by the carrier's attorney.

As stated, rule 152.4 calls for the requesting attorney to demonstrate why added hours are justified. We note that the time of the hearing itself would be demonstrated to the hearing officer as a participant therein. Additionally, the rule makes no provision for the hearing officer to consider matters that an attorney considers to be obvious on their face; it calls for the attorney to justify the amount. The Appeals Panel looks upon constitutional questions as more appropriate for the courts to decide and will not address that question. See Texas Workers' Compensation Commission Appeal No. 91080 (Docket No. redacted) decided December 20, 1991. Our review does not indicate that the hearing officer acted arbitrarily in making this award.

The decision of the hearing officer is affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge