

## APPEAL NO. 92446

A contested case hearing was held on July 22, 1992, in (city), Texas, (hearing officer) presiding as hearing officer. The hearing was requested by the attorney representing the claimant who urged the attorney's fee approved by the Disability Determination Officer (DDO) was erroneous and inadequate. The hearing officer agreed with the amount approved by the DDO and entered an order accordingly. Appellant requests that we reverse the hearing officer's order and award attorney's fees in accordance with his original application and that we order the carrier to pay attorney's fees regardless of whether or not any income benefits are now due or may become due.

### DECISION

Finding no abuse of discretion on the part of the hearing officer in his determination on attorney's fees, we affirm his order.

The appellant commenced representing the claimant when the carrier had not started paying benefits from an on-the-job injury. Why benefits had not started is not developed in the record since a compensable injury was not disputed. In any event, at the hearing evidence was received that the appellant represented the claimant in getting his benefits from the carrier without the necessity of any appearance on claimant's behalf at any benefit review conference or contested case hearing. The appellant, whose offices are located at (city), Texas, submitted a request for attorney's fees claiming 3.35 hours at the rate of \$200.00 per hour plus expenses of \$13.00. The DDO approved 2.50 hours of attorney time at the rate of \$125.00 per hour and expenses of \$10.00, excluding a \$3.00 long distance phone call.

From the brief testimony and the documentary evidence, the hearing officer determined the case involved no novel skill or difficult issues and that no extraordinary skill was required to accomplish the limited legal services involved. He concluded that the fee of \$200.00 per hour is excessive for even the large metropolitan area such as (city). He also held that the evidence and testimony did not support a conclusion that the appellant possessed any unusual expertise in the area of workers' compensation law to justify the high rate of \$200.00 per hour. The hearing office also stated the method of payment of attorney's fees in the case were those provided by the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., arts 8308-1.01 *et seq* (Vernon Supp. 1992) and Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE, Chapter 150.

We have reviewed the testimony and evidence presented by the appellant and find that the hearing officer correctly applied the policies and guideline contained in the statute and rules. In reviewing an appeal involving the approval of attorney fees, we apply the standard of "abuse of discretion." Texas Workers' Compensation Commission Appeal No. 91010 (Docket No. redacted) decided September 4, 1991. Applying that standard to this case, we do not find any abuse of discretion on the part of the hearing officer or that he in any way acted arbitrarily or capriciously. See Texas Workers' Compensation Commission

Appeal No. 92072A (Docket No. redacted) decided April 9, 1992; Texas Workers' Compensation Commission Appeal No. 92284 (Docket No. redacted) decided August 13, 1992. We find that he adhered to the policies and guidelines involving attorney's fees and, accordingly, affirm his decision and order.

The case is affirmed.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Robert W. Potts  
Appeals Judge