

APPEAL NO. 931001

This appeal arises under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3(g) (Rule 152.3(g)). The appellant (attorney), who represented the insurance carrier before the Texas Workers' Compensation Commission (Commission) in benefit dispute resolution proceedings, has filed a timely request for review of his attorney's fees approved by the hearing officer's order of October 15, 1993, asserting error in the hearing officer's failure to award any fees whatsoever for his time for initial services and for client conferences. No response to this appeal has been received.

DECISION

Finding error in the award of attorney's fees in this case, we reverse and render a new decision approving a greater amount.

In his appeal the attorney asserts that he represented the carrier before two contested case hearings in this case. In his Application and Order for Attorney's Fees (Form TWCC-152) the attorney requested fees for a total of 19.7 hours at the rate of \$85.00 per hour. The hearing officer approved fees for a total of 12 hours, all of which related to the attorney's time in driving to and attending two contested case hearings. The attorney has not appealed the amount of fees approved for attendance at the two hearings. (*Compare* Texas Workers' Compensation Commission Appeal No. 93877, decided November 10, 1993, where the hearing officer approved only 1.1 hours for the attorney's time at the hearing citing "entry exceeded duration of CCH," although the record showed the hearing lasted two hours. The Appeals Panel reversed and rendered a decision approving additional attorney's fees for the actual time the record showed the attorney spent in the hearing.)

The attorney requested fees for his initial services and for client conferences which he enumerated on the Form TWCC-152 as follows:

A. Initial Services

4-26-93: Initial Interview - 1.00
4-27-93: Set up file - .50

List Forms and Documents Completed and Filed:

4-[illegible]-93: Exchange Documents for CCH - 1.20
5-4-93: Prep of Interrogs to Claimant - 1.00
5-5-93: Exchange list of Persons w/knowledge of relevant facts - 1.00
5-7-93: Additional exchange of documents - 1.00

7-22-93: Prep of detailed report to company - 1.00

B. Client Conferences

5-6-93: Conference w/ Donna - .50

6-23-93: Conference w/Donna - .50

7-8-93: Review of Claimant's response to BRO's report - .50.

The hearing officer approved no fees for the above requested time commenting in his order that he could "not allow this many hours without better information on why this is so far in excess of allowal hrs."

Rule 152.3(a) provides that to claim a fee, an attorney representing any party shall submit written evidence of the attorney's time and expenses on Form TWCC-152. Rule 152.3(b) provides that the Commission shall review each attorney's fee request and approve a fee "based on the evidence submitted, but may ask for additional documentary evidence to fairly evaluate the fee claim." Section 408.222 (1989 Act) provides that in determining whether a defense counsel's fee is reasonable, the Commission shall consider issues analogous to those listed under Section 408.221(c) pertaining to claimant's counsel. Rule 152.3(b) further provides that in considering whether a defense counsel's fee is reasonable and necessary, the Commission shall also consider the attorney's fee guidelines set out in Rule 153.4.

The attorney's fee guidelines provide for a total of 1.0 hours for the initial interview, setting up the file, basic research, and filing initial documents with the Commission, and for a maximum of 2.0 hours for client conferences (per month). Rule 152.4(c) provides that an attorney may request approval for a greater number of hours than provided for in the guidelines but must demonstrate to the Commission's satisfaction that the higher fees are justified by the effort necessary to preserve the client's interest or the complexity of the legal and factual issues involved. In Texas Workers' Compensation Commission Appeal No. 93790, decided October 19, 1993, where we remanded for an evidentiary hearing because we were unable to determine if the hearing officer abused his discretion in the amount of fees approved in that case, we noted that "establishing the basis for the particular fee or expense item is a matter for that attorney to provide and it is not incumbent upon the hearing officer to seek further justification or to otherwise perfect the application." We also noted that the opportune time for an attorney to present any matters out of the ordinary concerning the requested fees is following the contested case hearing.

The standard for reviewing a hearing officer's determination of attorney's fees is one of abuse of discretion. See Texas Workers' Compensation Commission Appeal No. 92481, decided October 21, 1992, and Texas Workers' Compensation Commission Appeal No. 92375, decided September 14, 1992. As mentioned, the burden is on the attorney to justify fees which exceed the guidelines. See Texas Workers' Compensation Commission Appeal No. 92435A, decided October 5, 1992. In Texas Workers' Compensation Commission Appeal No. 93877, *supra*, we observed that "we, like the hearing officer, also

appropriately factor in our assessment of reasonable and necessary fees drawing on our knowledge as lawyers and judges," and that "where claims for attorney's fees are in basic compliance with the guidelines, reductions not otherwise apparent should be explained so that we can review the basis for the award." Having reviewed the time descriptions set forth above, we are satisfied the entries adequately state the nature of the services performed for which the fees are requested to the extent such times are within the guidelines, and that we need not remand for an evidentiary hearing as was necessary in Texas Workers' Compensation Commission Appeal No. 93790, *supra*.

The time requested by the attorney for client conferences is well within the two hours per month allowed by the guidelines. Accordingly, we find an abuse of discretion in the hearing officer's failure to approve any time for client conferences and we approve the 1.5 hours requested for client conferences. The attorney's request for a total of 6.70 hours for his initial services substantially exceeded the allowable 1.0 hour and the attorney failed to submit to the hearing officer any justification for such time beyond the above recitations in the Form TWCC-152. Accordingly, we find that the hearing officer abused his discretion respecting the approval of fees for these items only to the extent that he failed to approve the 1.0 hour allowed by the guidelines for initial services and we thus approve 1.0 hour for such initial services.

The decision of the hearing officer is reversed and a new decision is rendered increasing the attorney's fee awarded by 2.5 hours for the attorney's time.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge