

## APPEAL NO. 93231

On December 17, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The sole issue at the hearing was whether the claimant reported his injury to his employer within 30 days of the injury. The hearing officer determined that the carrier was relieved of liability under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act) because the claimant did not report his injury to his employer within thirty days of the date of injury and did not have good cause for failing to timely notify his employer of his injury.

The hearing officer also issued a Commission Order For Attorney's Fees (the Order) relating to the appellant's (the carrier's attorney's) application for attorney's fees. The carrier's attorney contends that the hearing officer erred in failing to approve 12.1 hours of the 25.9 hours he requested to be approved, and that the hearing officer failed to carry forward 1.2 hours of approved time into the "recap" section of the Order.

## DECISION

The Order of the hearing officer is modified to show an additional 1.2 hours of approved time for the attorney shown as attorney two in the recap section of the Order, and, as modified is affirmed. As modified the recap section of the order will show 1.2 hours of approved time for attorney one and 12.6 hours of approved time for attorney two.

The hearing lasted approximately ninety minutes and involved only the issue of timely notice to the employer. The application for attorney's fees filed by the carrier's attorney requested that 25.9 hours of attorney time be approved; 2.6 hours for attorney one and 23.3 hours for attorney two. The hearing officer approved 1.2 hours for attorney one for initial services and client conferences, and approved 12.6 hours for attorney two, including 1.2 hours for client conferences and 11.4 hours for services related to formal resolution of the disputed issue. The hearing officer inadvertently failed to include in the recap section of the Order the 1.2 hours of client conference time he approved for attorney two. The hours requested which the hearing officer did not approve were mainly spent on drafting letters and preparing for the hearing. The carrier's attorney contends that the hearing officer erred in not approving the remaining 12.1 hours of attorney time requested to be approved.

The Appeals Panel applies an abuse of discretion standard to review of orders on attorney's fees. Texas Workers' Compensation Commission Appeal No. 91010, decided September 4, 1991. The time guidelines for attorney's fees set forth in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE Sec. 152.4(d) (Rule 152.4(d)) apply to an application for attorney's fees by a carrier's attorney and in order to obtain approval of hours greater than those specified in Rule 152.4(d) the attorney 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 by the complexity of the legal and factual issues involved. Appeal No. 91010, *supra*; Rule 152.4(c). The guidelines permit approval of one hour for initial services, two

hours for client conferences per month, 2.5 hours for a benefit review conference (BRC), and 1.5 hours for a contested case hearing (CCH). The carrier's attorney did not attend the BRC, but did attend the 90 minute CCH. The guidelines state that the maximum hours set forth for a BRC and CCH include research and preparation time. In this case, the hearing officer approved 13.8 hours of attorney time which is in excess of the guidelines set forth in Rule 152.4(d). Having reviewed the record and the carrier's attorney's contentions on appeal, we cannot conclude that the hearing officer abused his discretion in failing to approve the additional 12.1 hours of time requested by the carrier's attorney. However, the recap section of the Order does not reflect the 1.2 hours which the hearing officer approved for client conferences for attorney two. Thus, the Order is modified to include the 1.2 hours for client conferences for attorney two in the recap section of the Order, and, as modified the hearing officer's Order For Attorney's Fees for the carrier's attorney is affirmed.

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Joe Sebesta  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge