

## APPEAL NO. 93646

Attorney represented carrier at a contested case hearing held in (city), Texas, on June 30, 1993, with (hearing officer) presiding as hearing officer. After the conclusion of the hearing, the attorney requested fees of \$1785.00 calculated at \$125.00 per hour for 10.8 hours of attorney time and \$50.00 per hour for 8.7 hours of paralegal time and expenses of \$806.46 (total amount of \$2591.46). The hearing officer approved fees of \$1223.75 based on a reduction of attorney hours to 7.55 and paralegal hours of 5.6. The hourly rate was not reduced. Approved expenses were \$771.81 based on a reduction of \$34.65 for copies of medical records charged to the claimant.

By letter of July 22, 1993, to the Appeals Clerk of the Texas Workers' Compensation Commission (Commission), the attorney requested review of the hearing officer's decision on fees by means of a contested case hearing. The attorney asserts that his client (carrier) has no objection to his fees as originally claimed.

We note that there is no provision for a contested case hearing to appeal the determination of a hearing officer on attorney's fees. Under Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 152.3(g) (Rule 152.3(g)), we will therefore treat the attorney's request as an appeal.

## DECISION

We reverse the decision of the hearing officer in part on attorney fees and render a new decision allowing fees and expenses in addition to those already approved by the hearing officer.

The Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. 401.001 *et seq.* (1989 Act) requires that all attorney fee requests for representation of any party must be approved by the Commission. Factors to be considered in approving fees are contained in Section 408.221(c) and Rules 152.3 and 152.4. Fees in excess of the guidelines may be requested but the amounts claimed must be justified. Rule 152.4(c). The standard of our review of attorney's fees approval is abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92375, decided September 14, 1992.

In this case, the evidence on the amount of fees was the number of hours expended and rates per hour. No additional justification for fees in excess of guidelines was included by the attorney on this request or on appeal. The application was the "fourth" application. The hearing officer provided no rationale for reducing the fees, but made reductions in the number of hours permitted for various activities of the attorney and paralegal resulting in an approximate one-third reduction in fees. Amounts within the guidelines were reduced in the area of client conferences.

Finding an abuse of discretion to a limited extent, we therefore reverse and approve

additional fees and expenses in the following amounts:

-We approve the disallowed expenses of \$34.65, on the basis that these appear to be medical records relating to previous claims and conditions of the claimant, and as such are not medical reports that were otherwise required by Commission rule to be provided to the claimant or carrier by the provider in the course of claimant's treatment on this claim.

For attorney time claimed, we approve:

-An additional 0.2 hour on 5/11 for client conference (\$25.00)

-An additional 0.6 hour for June client conferences (\$75.00)

-An additional 0.25 hour claimed for responding to the Commission's order for continuance. Because the attorney was responding to a Commission action over which he had no control, and the amount claimed for telephone call and letter is not excessive, we agree that the total amount should have been allowed. Additional amount is approved. (\$31.25).

As there was no justification provided by the attorney for other amounts which appear to be over guidelines, we cannot say that the hearing officer abused her discretion. The issues in the contested case hearing were whether the claimant had disability, and whether he had changed his treating doctor in accordance with applicable laws and rules. Many of the disallowed hours are for paralegal and attorney time spent collecting and analyzing medical records. The related hearings file indicates that many of these records relate to prior injuries of the claimant, although the compensability of the injury itself was not in dispute. The hearing transcript did not indicate that the carrier was claiming that any disability was caused only by prior injuries ("sole cause" defense). Prior injuries also did not appear to bear on the issue of whether the claimant's change of doctor should have been approved. The hearing officer allowed some of the time claimed for this, and she may have determined that the amounts allowed were reasonable given the issues at hand, especially on a fourth application for fees. We are not in a position, absent a justification, to set aside her determination, except to the extent noted above.

Therefore, additional amounts are approved in the amount of \$131.25 for attorney's fees, and \$34.65 in expenses. The hearing officer's order is reversed only to this extent, but otherwise affirmed.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Lynda H. Nesenholtz  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge