

## APPEAL NO. 93877

Pursuant to 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.*) a contested case hearing was held on August 25, 1993, in (city), Texas, (hearing officer) presiding as hearing officer. The merits of that case are found in Texas Workers' Compensation Commission Appeal No. 93844, decided October 26, 1993. On September 2, 1993, the hearing officer entered an order on attorney's fees involving the attorney herein. The approval of less than the amount claimed is the subject of this appeal. No response has been received to the appeal.

### DECISION

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

Two matters are involved in this appeal: the amount allowed for the contested case hearing and the reduced award for paralegal services. The carrier's attorney (attorney) claimed attorney's fees for two hours for the hearing but the hearing officer only approved 1.1 hours citing "entry exceeded duration of CCH." The transcript of the contested case hearing clearly shows that the hearing lasted two hours, from approximately 2:05 to 4:05 p.m. While the guidelines found in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4 (TWCC Rule 152.4) may contemplate that a hearing will normally last less than two hours, we do not interpret the guidelines to thereby limit the recovery for attorney services in fact rendered at a lengthier hearing. As indicated, the transcript establishes that the hearing did in fact consume two hours of time from start to finish. Under the circumstances, we find an abuse of discretion in allowing only 1.1 hours.

The second item in contention involved the amount claimed for paralegal activities. The hearing officer allowed two such items, a "6-21-93" telephone call to the employer and an "8-25-93" telephone call to employer in preparation for the hearing. Disallowed were several letters to the employer regarding a continuance, witnesses, and the hearing; letters and telephone calls concerning the use of a court reporter; and a letter to the Commission concerning a court reporter. These latter items were disallowed because "entries constitute secretarial services." We have previously held that expenses associated with the services of a paralegal are allowable in awards of attorney's fees in a given case. See Texas Workers' Compensation Commission Appeal No. 91019A, decided October 3, 1991; Texas Workers' Compensation Commission Appeal No. 92104, decided April 30, 1992. We have also clearly stated that claims for fees significantly in excess of the guidelines place a burden on the attorney to demonstrate that the hours in excess of the guideline were justified. Texas Workers' Compensation Commission Appeal No. 92435A, decided October 5, 1992. We have also indicated 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. See Texas Workers' Compensation Commission Appeal No. 93646, decided September 13, 1993. Our review of several of the entries which were disallowed do not suggest to us that they constituted secretarial services;

rather, they come within the commonly recognized function of a paralegal. The correspondence to the Commission regarding the court reporter is allowable under a fair interpretation of the provisions which provides for filing of documents with the Commission. In a similar vein, the correspondence with the employer concerning witnesses, a continuance, and the hearing are appropriately classified as paralegal activities. While we apply an abuse of discretion standard in reviewing a hearing officer's determination of attorney's fees (Texas Workers' Compensation Commission Appeal No. 92481, decided October 21, 1992; Texas Workers' Compensation Commission Appeal No. 92375, decided September 14, 1992), we, like the hearing officer, also appropriately factor in our assessment of reasonable and necessary fees drawing on our knowledge as lawyers and judges. Texas Workers' Compensation Commission Appeal No. 93800, decided October 22, 1993. Unfortunately, as we have observed, where attorney's fees are awarded post-hearing, the problem that often arises, as in this case, is that the record on attorney's fees is "sketchy at best, non-existent at worse." Texas Workers' Compensation Commission Appeal No. 93645, decided September 14, 1993. While we have determined that a remand is appropriate in certain situations (Texas Workers' Compensation Commission Appeal No. 93790, decided October 19, 1993), we do not find that to be the necessary remedy in this case.

Having reviewed the limited matters presented to us, we determine the award should be appropriately increased. Accordingly, we allow an additional .9 hours of attorney's time for the contested case hearing and an additional 2.1 hours for paralegal services as follows:

- 6-21-93Request to Commission.50
- 6-14-93 Letter re witnesses.50
- 6-21-93Call to employer & CR.50
- 7-7-93Call re continuance.30
- 7-26-93Call to court reporter.30

\_\_\_\_\_  
2.1 hours

(We cannot find that the hearing officer abused her discretion in the remaining one hour of disputed paralegal time classifying it as secretarial services)

The decision of the hearing officer is reversed and a new decision is rendered increasing the attorney fee award by .9 hours of attorney time and 2.1 hours of paralegal services.

\_\_\_\_\_  
Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

\_\_\_\_\_  
Philip F. O'Neill  
Appeals Judge

\_\_\_\_\_  
Gary L. Kilgore  
Appeals Judge