

APPEAL NO. 93883

On August 25, 1993, a contested case hearing was held in (city), Texas, in regard to attorney's fees as provided by the Texas Workers' Compensation Commission Act, TEX. LAB. CODE ANN. § 401.001, *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01, *et seq.*) and Tex. Workers' Comp. Comm'n, 28 TEX. ADMIN. CODE § 152.1 - 152.5 (Rules 152.1 - 152.5). The hearing officer, (hearing officer), decided that two orders for attorney's fees should be reduced to reflect no payment for secretary service and work done after the attorney-client relationship ended. The appellant (attorney) asserts that the findings of fact are contradictory to the decision and order and pointed out that he only billed for hours resulting from time he spent "up to the date I was employed as counsel. . . ."

DECISION

We affirm.

Claimant requested a hearing because he thought the payment approved in two orders for his attorney was excessive. One order approved \$900.00 and the other approved \$350.00. Claimant acknowledged that since he was not an attorney, he could not adequately dispute particular time said to be provided by the attorney. He did point out, though, that before he wrote a letter terminating the services contract between the two in April 1993, he had become frustrated at not being able to talk to the attorney. He states that he only seemed able to talk to a secretary and the attorney did not return his calls; he added that he felt as if the relationship had ended in February 1993, but because he could not get through to the attorney, he wrote the April letter formally ending it.

The hearing officer questioned the attorney about several entries on the forms that the attorney had submitted for payment of fees. He acknowledged that the entry "sec" meant secretary, such as "secretary called TWCC." The hearing officer asked if the secretary were a paralegal, and the attorney replied that his secretary was always an experienced legal secretary.

Rule 152.4(b) provides, "(a)s part of the application for attorney's fees, a claimant's attorney shall submit a statement of hours expended on the case by attorneys, paralegal, and law clerks." There is no provision in the rule for submission of secretarial time. The Appeals Panel has called for payment of paralegal and clerk time (See Texas Workers' Compensation Commission Appeal No. 91019(A), decided October 3, 1991) but has never reversed a hearing officer's decision for failing to allow secretarial time in considering an application for attorney's fees. The times disallowed indicated secretarial acts and a period of time in regard to receipt of the claimant's letter of dissolution.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. The attorney attacked the hearing officer's decision stating that the hours billed were a direct result of his time spent, and, (we interpret that he meant to say) that he only billed for his time while employed. These are questions of fact which the hearing officer addressed. His Findings of Fact Nos. 3 and 5, which approved, respectively,

4.45 hours rather than nine based on reductions applied for secretarial time, and 1.7 hours rather than 3.5 based on reductions applied for secretarial time and receipt of the claimant's termination notice were sufficiently supported by the evidence. The findings of fact support the decision and order and are not contradictory to it.

The decision and order, which reduced the total award from \$1,250.00 to \$615.00, are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge