

## APPEAL NO. 94115

This appeal arises under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The appellant is the attorney for the claimant. He contends that the hearing officer erred by disallowing certain paralegal hours claimed for a telephone conference in connection with this case. No response has been filed.

### DECISION

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

RH, the attorney who represented claimant, had originally submitted an application for attorney's fees in the amount of \$262.50. This billing was for attorney and paralegal services performed for the period September 22 to November 9, 1993. The original application included .75 hours in attorney's time at \$300.00 per hour and .50 hours in paralegal time at \$75.00 per hour. The Texas Workers' Compensation Commission (Commission) approved the hours requested, but reduced the hourly amount to \$150.00 per hour and \$50.00 per hour, respectively, for a total fee of \$137.50. The claimant contended this amount was excessive, and a hearing was held on January 7, 1994.

The hearing officer, PR, issued a decision and order which found the previous fee award excessive, and he accordingly found that attorney fees in the amount of \$125.00 were reasonable and necessary. In so holding, the hearing officer reduced paralegal time from .50 to .25 hours.

In discussing the paralegal services listed on the application for attorney's fees, claimant's attorney described them as getting answers from claimant to questions which had been previously propounded to him on September 28th, and discussing with claimant on October 12th the fact that he could not sue his employer where the latter was covered by workers' compensation insurance. Claimant was not charged for a November 9th telephone call in which he fired his attorney.

In his appeal the attorney stated that both telephone calls were related to the claimant's case, "both were responded to in a professional manner," and both were previously approved by the Commission. At the hearing the claimant did not deny that he talked with the attorney or his office on each of the dates listed, but stated he saw no benefit from the attorney's actions. He also did not believe he should have been charged "every time the attorney does something."

Section 408.221 provides, among other things, that an attorney's fee paid to a claimant's counsel must be approved by the Commission or court and that the Commission by rule shall provide guidelines for maximum attorney's fees for specific services in accordance with that section of the law. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(d) (Rule 152.4(d)), allows a maximum of two hours per month for the category of

services "client conferences," for which the attorney in this case was claiming .25 paralegal hours in September and .25 hours in October.

The standard for reviewing a hearing officer's determination of attorney's fees is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92481, decided October 21, 1992. Where time requested by an attorney for client conferences was within the two hours per month allowed by the guidelines, the Appeals Panel has found an abuse of discretion in the hearing officer's failure to approve requested hours, stating that "where claims 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. 931001, decided December 16, 1993. Likewise, in this case, the request was well within the maximum two hours provided for by rule, the entries adequately state the nature of the services performed, and there was no allegation that the claimant was being billed for services not actually provided by the paralegal. We accordingly find no basis for the hearing officer's determination that the amount in question was "excessive," and we approve the .25 hours which had been disallowed by the hearing officer.

The decision of the hearing officer is reversed and a new decision is rendered increasing the attorney's fee award by .25 hours for the paralegal time.

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Lynda H. Nesenholtz  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge