

APPEAL NO. 94329

This appeal arises under the provisions of the Texas Worker's Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). (claimant's attorney) represented the claimant in a workers' compensation case in (city), Texas. The disputes which arose during the pendency of claimant's workers' compensation claim were resolved informally, without the intervention of the Texas Workers' Compensation Commission (Commission). Claimant's attorney submitted an Application and Order for Attorney's Fees for the period from March 14, 1991, to July 15, 1993. He requested fees totalling \$1,350.00 calculated at \$150.00 per hour for 8.0 hours of attorney time and \$75.00 per hour for 2.0 hours of paralegal time. In an order dated November 18, 1993, a Disability Determination Officer (DDO) approved a total fee of \$900.00, approving 6.0 hours of attorney time at \$150.00 per hour. Claimant thereafter requested that a contested case hearing (CCH) be convened to determine whether the fee, as approved, was excessive. The CCH was conducted on February 11, 1994, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer found that a fee of \$420.00, representing three hours of professional services at \$140.00 per hour, was a reasonable attorney fee in this case. She further ordered that since it appeared that claimant's attorney had already received fee payments from the carrier in excess of \$420.00, he was ordered to refund to the claimant all monies in excess of \$420.00 he had received. Claimant's attorney filed a timely appeal, challenging the hearing officer's decision. Claimant did not file a response.

DECISION

We affirm.

Initially, we will address claimant's attorney's assertion that claimant's challenge to the fee order is untimely. In an order dated November 18, 1993, the DDO approved a fee award of \$900.00. The cover page of that order, forwarding it to claimant, advised that if claimant elected to contest the order, he was to request a CCH not later than the 15th day after receipt of the order. On November 24, 1993, the Commission received the claimant's written request for a CCH. Thus, it is evident that claimant's challenge to the fee award was well within the prescribed 15-day period for such a challenge, and claimant's assertion of untimeliness is without merit.

The 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 the hearing officer's decision approving attorney's fees is abuse of discretion. Texas Worker's Compensation Commission Appeal No. 93646, decided September 13, 1993.

In this case, claimant's attorney submitted an itemized bill with his Application and Order for Attorney's Fees; however, it did not include any justification for his request of fees in excess of guidelines and was further lacking in detail as to the exact nature of the services

performed on behalf of the claimant. Claimant's testimony at the CCH established that in the period of the fee request two disputes arose for which the claimant requested the assistance of his attorney. Specifically, in March 1991, the month of the attorney's retention, it appears that the claimant's benefit checks were being sent to the wrong address and in 1993, a dispute as to the claimant's impairment rating arose. Claimant's attorney testified that he had several conversations with the claimant to assist him in procuring proper medical treatment and that he had explained current workers compensation law to the claimant so that he would not expect a lump sum settlement of his case. During claimant's attorney's cross examination of the claimant at the CCH, it appears that the attorney confused claimant with another of his workers' compensation clients and that he attributed work he had done in relation to that client's claim to the claim in this case.

It is well-settled that it is incumbent upon the attorney requesting fees in excess of the guidelines to provide justification for the request at the time that the request is filed. See Texas Worker's Compensation Commission Appeal No. 93646, decided September 13, 1993, and Texas Worker's Compensation Commission Appeal No. 92381, decided September 14, 1992. In addition, we have noted that it is solely the attorney's responsibility to provide that justification and the hearing officer has no duty to solicit such information. Texas Workers's Compensation Commission Appeal No. 91019A, decided October 3, 1991. Thus, where, as here, an attorney did not provide justification of a request in excess of the guidelines, he cannot now be heard to complain that the decision to reduce the award was an abuse of discretion.

Claimant's attorney was required to provide the justification of his request for fees in excess of the guidelines at the time he submitted the request. Because there was no such justification provided, herein, we cannot say that the hearing officer's decision to reduce the fee award was an abuse of discretion. See Appeal No. 92381, *supra*. We note that the argument of claimant's attorney in this case is weakened by the fact that, in an attempt to justify his fee request at the CCH, he confused the claimant's case with that of another one of his client's and apparently attempted to attribute work completed in that case to claimant's file. Pursuant to Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 152.4 (Rule 152.4), an attorney is generally limited to a total of six hours in the instance where, as here, the disputes related to the claim are resolved without the intervention of the Commission. In his fee request, the claimant's attorney requested compensation for eight hours of service. The DDO approved six hours of fees and following the CCH, the hearing officer further reduced the approved hours to three at \$140.00 per hour, rather than the \$150.00 per hour requested by the claimant's attorney. The hearing officer apparently decided that when the relatively simple nature of the disputes that arose herein were considered in conjunction with claimant's attorney's testimony as to the services he performed and his apparent confusion as to what work was properly attributable to claimant's file, three hours represented the outside limit of the reasonable and necessary time expended by the attorney on claimant's behalf. Based on our review of the record, we cannot conclude that the hearing officer acted arbitrarily in so finding. Rule 152.3(i) specifically provides that "[i]f an attorney has been paid more than authorized by the final order of the commission, the commission shall order that the excessive amount be reimbursed;" therefore, because claimant's attorney

received payment in excess of the final approved reasonable fee herein, the hearing officer did not abuse her discretion by acting in accordance with Rule 152.3(i) and ordering claimant's attorney to refund the excess payment to the claimant.

For the foregoing reasons, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge