

APPEAL NO. 94356

This appeal arises under the provisions of the Texas Worker's Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). (carrier's attorney) represented carrier at a contested case hearing (CCH) held in (city) Texas, on October 6, 1993. After the conclusion of the hearing, carrier's attorney filed a request for fees of \$2,724.00 calculated at \$100.00 per hour for 24.6 hours of attorney time and \$60.00 per hour for 4.4 hours of paralegal time and expenses of \$703.11, for a total fee request of \$3,427.11. The hearing officer approved fees of \$2,050.00 based on a reduction of attorney hours to 18.3 hours and a reduction in the hourly rate for the 4.4 paralegal hours to \$50.00 per hour. The requested expenses were approved, without modification. Carrier's attorney filed a timely appeal from the hearing officer's order, requesting our review of the award contending that the hearing officer abused his discretion in reducing the fee award.

DECISION

We affirm.

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 Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3 and § 152.4 (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, carrier's attorney submitted an itemized bill with her Application and Order for Attorney's Fees (TWCC 152 Form); however, she did not submit justification for her request of fees in excess of guidelines to the hearing officer. Apparently, the hearing officer reviewed the itemized bill and made a handwritten notation of the hours approved next to the requested hours for each entry. In so doing, it appears that the hearing officer already approved hours in excess of those allowed in the guidelines, particularly in approving 7.9 hours for preparation and attendance at the CCH.¹

It is well-settled that the attorney requesting fees in excess of the guidelines must provide justification for the request to the hearing officer 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.

¹We note an apparent mathematical error in the hearing officer's decision. In his order, the hearing officer approves 18.3 of the 24.6 requested attorney hours; however, if the handwritten notations of the approved hours on the itemized bill are added they total 16.6 hours. There was no response filed in this case; therefore, it appears that no one is challenging the hearing officer's order on the basis of the possible mathematical error and the 18.3 figure will not be modified.

Thus, where, as here, an attorney did not provide justification of a request in excess of the guidelines to the hearing officer, she cannot now be heard to complain that the hearing officer's decision to reduce the award was an abuse of discretion.

On appeal, carrier's attorney asserts that the hours in excess of the guidelines in this case are justified because the claimant received treatment from 15 doctors and three hospitals in the course of treating her injury. We express no opinion as to whether such information might be sufficient to support an award of fees in excess of the guidelines, for it simply comes too late in the day in this case. Carrier's attorney was required to provide the justification of her request for fees in excess of the guidelines to the hearing officer at the time she submitted the request. Because there was no such justification provided to the hearing officer herein, we cannot say that his decision to reduce the fee award was an abuse of discretion. See Appeal No. 92381, *supra*. We note that the abuse of discretion argument in this case is weakened by the fact that, even in the absence of the required justification, it appears that the hearing officer awarded fees in excess of the guidelines.

Our review of the record does not indicate that the hearing officer acted arbitrarily in reducing the fee award; therefore, the decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge