

APPEAL NO. 980092

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 12, 1997. The issues at the CCH were whether claimant has reached maximum medical improvement (MMI) and what is claimant's correct impairment rating (IR). The hearing officer determined that claimant reached MMI on September 20, 1996, with an IR of 19% as certified by the designated doctor. Carrier appealed, arguing in part, that the designated doctor was not qualified to give an opinion as to claimant's IR or, in the alternative, that the designated doctor's certification is contrary to the great weight of the other medical evidence. In Texas Workers' Compensation Commission Appeal No. 972601, decided January 29, 1998, the Appeals Panel affirmed the decision.

On December 23, 1997, the hearing officer issued a Commission Order for Attorney's Fees (order) approving .50 hours out of 13 hours requested for an approved fee of \$62.50 out of \$1,625.00 requested. Three items were disapproved, with the reason being given in all three cases "Ex Guideline/Unreasonable." Appellant (attorney) appeals, urging that his attachments to his application were ignored or found unsatisfactory and that the hearing officer did not even approve the number of hours specified in the guidelines. The file contains no response from the carrier or claimant.

DECISION

Reversed and remanded.

We review attorney fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. All of the disallowed items deal with the attorney's research for and submission of the carrier's appeal of the CCH decision to the Appeals Panel (even though all items are classified in the order and may have been classified in the attorney's Application for Attorney's Fees (TWCC-152) as dealing with the CCH). While the computer printout from the Attorney Fee Processing System (AFPS) indicates no justification text by the attorney and no log text by the hearing officer, the attorney attached to his appeal the justification text and the computerized billing records he had also included with his TWCC-152.

The hearing officer's refusal to approve at least the five hours provided for in the guidelines for participation in the administrative appeal process (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c)7 (Rule 152.4(c)7)) without any explanation was an abuse of discretion. Texas Workers' Compensation Commission Appeal No. 960202, decided March 15, 1996. Upon demonstrating to the Texas Workers' Compensation Commission (Commission) that fees in excess of the guidelines are justified, fees in excess of the guidelines may be approved. Texas Workers' Compensation Commission Appeal No. 972549, decided January 14, 1998. The attorney submitted written justification in this case.

We stated in Texas Workers' Compensation Commission Appeal No. 970248, decided March 31, 1997:

A hearing officer should provide a reasoned justification to deny any hours exceeding the guidelines for which an attorney, unopposed by any party, has submitted written justification.

Without the hearing officer providing any reasoned justification for her denial of hours, including those in excess of the guidelines, it appears to us that she has abused her discretion.

Since the attorney in the case at hand is requesting approval for 12.70 hours for his participation in the appeals process, almost two and one-half the number of hours provided in the guidelines for the appeal in Appeal No. 972601, *supra*, we reverse the order and remand for a CCH on attorney fees. If the hearing officer disapproved any attorney fees, she should provide some reasonable justification for disapproval of fees where justification is provided.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge