

APPEAL NO. 980132

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 21, 1997, a contested case hearing (CCH) was held with hearing officer. The hearing officer determined that: (1) claimant's neck injury is the result of the compensable injury sustained on _____; (2) the carrier waived the right to contest the compensability of the claimed neck injury by not contesting compensability within 60 days after it was notified of the claimed injury; and (3) claimant had disability resulting from the injury sustained on _____, commencing April 11, 1997, and continuing.

On December 30, 1997, the hearing officer issued a Commission Order for Attorney's Fees (order) approving 19.10 out of 24.10 hours requested and expenses of \$252.24 out of \$325.44 requested, for a total approved fee of \$2,353.24 out of \$2,976.44 requested. The hearing officer approved only 2.00 hours out of 4.50 hours requested to review a file on October 6, 1997, and disapproved 2.50 hours to prepare for proceeding on November 20, 1997, both for the reason "Ex Guideline/Unreasonabl." The hearing officer also disapproved an expense of \$73.20 for "Other" on November 20, 1997, for the reasons "Exceeded Guidelines."

Appellant (attorney) appeals, contending that 4.50 hours was a reasonable time for reviewing 530 pages of files, that it was not reasonable for the hearing officer to approve 2.00 hours for legal research and then refuse to approve any of the 2.50 hours requested to prepare for the proceeding, thus marshaling the research. The attorney also contends that it was arbitrary for the hearing officer to approve all other travel expenses, but then deny lodging expenses the night before the CCH. He also argues that this item did not exceed the guidelines. The file contains no response from the carrier or the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

The attorney, in his justification text, speaks of receiving, three days after he was engaged to represent the carrier, the carrier's claim file and records of claimant's employment and prior claims, aggregating 530 pages, which he spent 4.50 hours reviewing. He states that he flew from (city 1) (where his office is located) to (city 2) the evening before the CCH, lists his travel expenses, including \$73.20 lodging expense, and states that he spent 2.50 hours that evening preparing for the CCH. He attached copies of receipts to substantiate his travel expenses. The Attorney Fee Processing System (AFPS) shows the following log text by the hearing officer: "FEES JUSTIFIED. FEES FOR EXPENSES REDUCED AS EXPENSE NOT WITHIN STATE GUIDELINES." We will construe this log text as indicating that a justification text was submitted and that the hearing officer took it into consideration in issuing the order.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Appeal No. 951196, decided August 28, 1995. The guidelines (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c) (Rule 152.4(c)) provide for one hour for initial interview and research. The hearing officer approved two hours. Since she approved twice what the guidelines allow, we do not consider that she abused her discretion in doing so.

In the category of participation in the CCH, Rule 152.4(c)(6) allows actual time in the CCH plus four hours. The hearing officer approved 1.30 hours to prepare for proceeding on November 20, 1997, and 2.00 hours for performing legal research on November 20, 1997, for a total of 3.30 hours. Thus, only 1.80 hours of the 2.50 hours disapproved for preparing for proceeding on November 20, 1997, actually exceeded the guidelines. The hearing officer abused her discretion in disapproving .70 hours for that item.

As to the lodging expense of \$73.20, which was disapproved for exceeding state guidelines, that expense is governed by Rule 152.5(b), which authorizes in cases such as this "travel expenses, at the rate set for state employees by the legislature in the General Appropriations Act." The General Appropriations Act, House Bill No. 1, Acts of the 75th Legislature, Regular Session, 1997, in Article IX, Section 16, provides, in paragraph 2a, that "State employees who travel within the State of Texas shall be reimbursed for the actual cost of lodging and meals. However, the reimbursement may not exceed \$70.00 per day per location for lodging. . . ." In addition, effective September 1, 1995, under House Bill 2129, Acts of the 74th Legislature, Regular Session, 1995, state employees must pay all hotel taxes, and may then be reimbursed for that expense, in addition to reimbursement for lodging expenses. The attorney's receipt for his lodging expense includes a tax of \$8.85. Thus, his lodging expense was \$64.35 and his reimbursable tax expense was \$8.85. The hearing officer abused her discretion in denying his total expense of \$73.20 on this item since it did not exceed state guidelines. (Even if it had exceeded the guidelines, only the amount in excess of the guidelines should have been disapproved.)

We affirm the order insofar as it disapproves 2.50 hours to review the file on October 6, 1997, and insofar as it disapproves 1.80 hours to prepare for proceeding on November 20, 1997. We reverse the order insofar as it disapproves .70 hours to prepare for proceeding on November 20, 1997, and insofar as it disapproves \$73.20 in lodging and tax expense on November 20, 1997, and render a decision approving an additional .70 hours for an additional fee of \$77.00 and approving the \$73.20 expense item previously discussed, for a total additional amount of \$150.20, to be paid to the attorney.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Christopher L. Rhodes
Appeals Judge