

APPEAL NO. 990025

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 December 16, 1998. The issues at the CCH were injury, disability, carrier waiver of contest of compensability, and average weekly wage (AWW). The parties agreed orally on the record that:

1. The Claimant sustained a compensable injury on _____.
2. The Claimant did not sustain disability from July 22nd through October 7, 1998, but the Claimant did have disability beginning on October 8, 1998, and continuing through the date of the [CCH].
3. The Claimant's [AWW] was \$584.80.
4. The Carrier did not waive the right to contest the compensability of the claimed injury by not sufficiently contesting compensability within sixty days of being notified of the injury as per Rule 124.6 [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6].

On December 23, 1998, the hearing officer issued a Commission Order for Attorney's Fees (Order) covering services for the period of December 1 through December 16, 1998, approving .50 hours out of 4.50 hours requested, for a total approved fee of \$75.00 out of \$675.00 requested. The appellant (attorney) appeals, contending that the hearing officer improperly denied CCH preparation time of four hours, presumably because the disputed issues were resolved at the CCH. The attorney argues that since he had fully prepared for the CCH prior to the resolution of the issues, he should be entitled to an Order for the preparation time. The file contains no response from the claimant or the carrier.

DECISION

We reverse and render.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The decision of the hearing officer indicates that the agreement previously discussed was made orally on the record at the CCH. The Order indicates that the attorney requested and the hearing officer approved .10 hours for attending the CCH. The attorney indicates in his appeal that he fully prepared for the CCH prior to the agreement. The amount of time requested by the attorney does not exceed the guidelines, Rule 152.4(c)(6), and does not appear to be excessive in view of the issues involved. Since the agreement was not reached until the CCH itself and preparation for the CCH was thus necessary, Rule 152.4(c)(6) is applicable rather than the one hour provided in Rule 152.4(c)(4). We note that careful and complete preparation for a CCH may well be a factor in reaching an

agreement at the CCH. We conclude that the hearing officer abused his discretion in denying the four hours in question.

We reverse the order and render a decision approving four additional hours for preparation for the CCH, for an additional approved fee of \$600.00, resulting in a total approved fee of \$675.00.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge