

APPEAL NO. 990093

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 October 1, 1998. The issues at the CCH were: (1) whether claimant sustained a compensable injury on _____; (2) whether carrier contested compensability on or before the 60th day after being notified of the injury and, if not, whether carrier's contest was based on newly discovered evidence that could not reasonably have been discovered at an earlier date; (3) whether there was a *bona fide* offer of employment tendered to claimant; (4) whether claimant had disability; (5) whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) become final under Rule 130.5(e) (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e)); (6) whether and/or when claimant reached MMI; and (7) claimant's IR. The hearing officer, in her Statement of the Evidence, stated:

Claimant failed to establish that he sustained an injury on _____, and that Carrier was provided written notice of this injury. Because Claimant failed to sustain his burden of producing sufficient credible evidence of a compensable injury, the remaining issues of disability, *bona fide* offer of employment, date of [MMI] and [IR] are moot.

On December 30, 1998, the hearing officer issued Texas Workers' Compensation Commission Order for Attorney's Fees No. (Docket No.) (Order), covering services for the period of September 1, 1998, through September 30, 1998, approving zero hours out of 31.85 hours requested and no expenses out of \$594.46 requested, for a total approved fee of \$0.00 out of \$3,864.71 requested. Various requested fees were disapproved for the reasons "Ex Guideline/Unreasonabl," "Multiple Reasons," and "Unnecessary." The expenses were disapproved for the reasons "Unnecessary" and "Multiple Reasons." The Attorney Fee Processing System (AFPS) reflects a lengthy justification text by the appellants (attorneys) and shows the following log text by the hearing officer:

ALL FEES DENIED AS UNNECESSARY AND UNREASONABLE AS FEES IN EXCESS OF \$20,000 WERE PREVIOUSLY APPROVED FOR A CASE THAT NEVER HAD A HEARING AS CLAIMANT DID NOT APPEAR AND NO APPEAL WAS TAKEN. THESE FEES ARE NOT APPROVED AS THEY ARE DUPLICATE OF PRIOR SUBMISSIONS WHICH WERE APPROVED.

The attorneys appeal, detailing the services they performed, such as traveling to (city A) to take the claimant's deposition and traveling to attend a CCH. The attorneys contend that the hearing officer's action in denying the requested fees and expenses is arbitrary and a denial of due process. The attorneys request that the Appeals Panel reverse the Order and render a determination that they are entitled to the fees and expenses requested. The file contains no response from the carrier or the claimant.

DECISION

We reverse and remand.

We review attorney's fees cases using an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. We first note that an examination of the other attorneys' fee orders for the carrier's attorneys in this case reveals that no other order deals with the same dates of service covered by the Order. The statement of the hearing officer that the fees not approved on this Order are "duplicate of prior submissions which were approved" is, therefore, in error and denial of all the requested fees for that stated reason constitutes an abuse of discretion.

A fee may exceed the attorney's fee guidelines if the attorney requesting the fee provides a justification for doing so. Rule 152.4(b). Texas Workers' Compensation Commission Appeal No. 970248, decided March 31, 1997. There is nothing to indicate that the hearing officer considered the justification text and she provided the only justification for denial as indicated above for disapproving the disputed items. Therefore, we have no basis to determine whether the hearing officer abused her discretion in disapproving those items. Texas Workers' Compensation Commission Appeal No. 960158, decided March 5, 1996. The disallowance of many requested items for "Multiple Reasons" also does not provide the Appeals Panel with a sufficient basis to review the Order for an abuse of discretion. Texas Workers' Compensation Commission Appeal No. 962414, decided January 7, 1997.

One of the stated reasons for disapproving all of the requested attorneys' fees is in error, because attorneys' fees for the same dates of service were not previously approved in prior orders. Because of this, and because the hearing officer did not give any articulated reasoning for disapproving the fees in the Order itself, other than that the total amount of fees previously approved in this case as a whole, we reverse the Order and remand for a hearing at which the hearing officer may determine what fees are reasonable and necessary.

We reverse the hearing officer's Order and remand for further proceedings consistent with this decision.

Judy Stephens
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge