

APPEAL NO. 990097

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 26, 1998. The issue at the CCH was whether certain attorney's fees awarded to respondent, (attorney), were excessive. The hearing officer found that the appellant (claimant) did not timely contest the attorney's fees in dispute. The hearing officer also found that the services for which fees were charged were reasonable, necessary, and performed and that the hourly rate was reasonable. The claimant appeals, contending that the issue was not one of whether or not the attorney's fees were excessive, but was one of unjust enrichment to which the deadline for contesting the attorney's fees does not apply. There is no response from the attorney to the claimant's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The facts of this case are really undisputed and the question before of us is one of law. It is undisputed that the claimant hired the attorney to represent him in regard to his workers' compensation claim and that the attorney provided legal services to the claimant in connection with this claim. It is also undisputed that the Texas Workers' Compensation Commission (Commission) entered a series of orders approving attorney's fees in the case beginning in September 8, 1995, and continuing until April 16, 1996. The claimant does not dispute that the services, for which the approved fees were claimed were performed, were reasonable and necessary and resulted in benefit to the claimant.

The claimant contends, and the attorney agrees, that no services were performed by the attorney after April 1996 due to the fact that the attorney was suspended from the practice of law. It is clear that this suspension was in no way related to the claimant's case, but that it effectively ended the attorney-client relationship. The claimant testified that he continued to represent himself as his claim was not fully resolved and because no other attorney would represent him with the outstanding lien for attorney's fees on his claim.

The claimant testified that while representing himself he was able to favorably resolve the issue of his impairment rating (IR), getting his IR raised from the 10% initially assessed by the carrier to 14%. The claimant does not dispute that the attorney was entitled to fees from his temporary income benefits (TIBS), but argues that the attorney should not be entitled to collect fees from his impairment income benefits, as he obtained these benefits through his own efforts without the assistance of his attorney. The claimant contends that for the attorney to collect fees on benefits the claimant obtained through his own efforts would constitute unjust enrichment.

The claimant testified that he did not dispute any of the Commission's orders concerning attorney fees until more than 15 days after they were received by him. Commission computer records indicate that the claimant did not contest these orders until March 24, 1998. The claimant contends that this is irrelevant because he is not contesting that the fees were reasonable and necessary, and that the time limit in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3(d) (Rule 152.3(d)) does not apply to a contest dispute of attorney fees based upon unjust enrichment.

Unjust enrichment is an equitable doctrine. Equity itself was a system of extraordinary relief developed to provide a remedy when there was no adequate legal remedy at law. The 1989 Act is a statutory system which provides certain rights and obligations as provided by the statute itself and the rules promulgated under the statute. In Texas Workers' Compensation Commission Appeal No. 93642, decided September 10, 1993, where we rejected the claimant's argument that applying the doctrine of unjust enrichment, we should reverse a hearing officer who did not order the carrier to pay interest on TIBS when TIBS were paid pursuant to an agreement between the parties which did not provide for interest, we stated as follows:

"Generally the powers of an administrative agency are derived entirely from legislative enactment. The agency has only such powers as are expressly conferred on it by statute together with those necessarily implied from powers and duties expressly given or imposed." 2 TEX. JUR. 3d *Administrative Law* §11 (1979). In the absence of explicit authority in the 1989 Act or the Commission rules, the Appeals Panel will refrain from ordering the payment of interest under the particular circumstances of this case where the parties did not provide for the payment of interest as a term of their agreement.

This is not to say that we are entirely precluded from applying equitable doctrines when they are applicable, and we have in fact done so. However, as creatures of statute we must do so with great caution.¹ We find our decision in Texas Workers' Compensation Commission Appeal No. 961841, decided November 4, 1996, analogous to the present case. In that case, the carrier contended that it should be allowed to adjust the claimant's income benefits because of a payment it had made payments to the claimant of over \$25,000.00. The hearing officer stated that she lacked the authority to adjust income benefits to compensate for this payment because the payment itself was not an income benefits payment and suggested that the carrier's remedy might be found in a court of general jurisdiction. We affirmed the hearing officer's decision.

¹In addition to limitations on our own authority, we are also mindful of the intrinsic problems of subjectivity with applying equitable doctrines pointed out over 300 years ago by JS when he stated as follows in *Table Talk* concerning the role of the Chancellor, the judge of a court of equity:

Equity is a roguish thing. For Law we have a measure, know what to trust to; Equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is Equity. 'Tis all one as if they should make the standard for the measure we call a "foot" a Chancellor's foot; what an uncertain measure would this be! One Chancellor has a long foot, another a short foot, a third an indifferent foot. 'Tis the same thing in the Chancellor's conscience.

Under the particular facts of this case, we find no error in the hearing officer's not applying the doctrine of unjust enrichment. We also find no error in her application of the 1989 Act and the Commission's rules in finding that the claimant did not timely contest the Commission's order on attorney fees under Rule 152.3(d), which requires that such claimant request a hearing within 15 days of the receipt of the Commission's order. As the claimant does not dispute that the fees granted by the Commission were reasonable and necessary for work which was performed, the hearing officer did not err by so finding.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge