

APPEAL NO. 990450

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 5, 1998. The issues at the CCH were injury and disability. The hearing officer determined that the claimant did not sustain an injury in the course and scope of her employment on _____, and did not have disability. On February 16, 1999, (pursuant to an Application for Attorney's Fees (TWCC-152) received February 9, 1999) the hearing officer issued a Commission Order for Attorney's Fees February 16, 1999 (Order No. 3), covering services for the period from September 20, 1998, through December 2, 1998, approving 7.00 hours out of 13.60 hours, for a total approved fee, including expenses, of \$799.85 out of \$1,466.64 requested. The disapproved hours were disapproved for the reason "Ex Guideline/Unreasonabl," while two expense items were disapproved for the reasons "Exceeded Guidelines" and "Multiple Reasons," respectively. The attorney appeals (the attorney's law firm styles its appeal as the carrier's request for review), merely listing the items which were disapproved, and asks that the Appeals Panel reverse Order No. 3 and render a decision approving all fees and expenses submitted or, in the alternative, remand for further consideration by the hearing officer. The file contains no response from the carrier or the claimant.

DECISION

We affirm.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. A review of the Attorney Fee Processing System (AFPS) indicates that the attorney did file a justification text stating in broad categories what he did and indicating that the fees were reasonable and necessary. The AFPS also shows the following log text by the hearing officer:

THIS IS THE SECOND FEE APPLICATION IN THIS MATTER. TIME CLAIMED FO[R] PREPARING FOR HEARING WAS REDUCED SINCE OVER SIX HOURS HAVE BEEN PRE[VI]OUSLY CLAIMED AND APPROVED AND THE ADDITIONAL TIME CLAIMED WAS NOT R[EA]SONABLE OR NECESSARY IN LIGHT OF THE ISSUES PRESENTED IN THIS MATTER[.] TIME CLAIMED FOR REVIEWING RECORDS UNDER "COMMUNICATIONS" WAS LIKEW[IS]E DENIED. TIME SPENT IN HEARING WAS 1.5 HRS. REASONABLE TRAVEL TIM[E] FROM TYLER TO PITTSBURG IS ONE HOUR EACH WAY, BASED UPON THE HEARING [O]FFICER'S EXPERIENCE. TIME CLAIMED FOR ATTENDING HEARING WAS REDUCED [A]CCORDINGLY.

Two other orders on attorney's fees for the attorney in this case have been issued, Order No. 1, dated February 5, 1999 (TWCC-152 received February 4, 1999), and Order

No. 2, dated February 24, 1999 (TWCC-152 received February 8, 1999). Although Order No. 2 was issued after Order No. 3, we will nevertheless consider it since it had been received and was under consideration when Order No. 3 was issued. In the category of participation in the CCH, Order No. 1 approved 3.80 hours, as requested, and Order No. 2 approved 4.00 hours as requested, for a total of 7.80 hours. In the category of communications for the month of September 1998, Order No. 1 approved 4.10 hours, as requested, and Order No. 2 approved 5.70 hours, as requested.

Order No. 3 approved 3.50 hours out of 5.50 hours requested for attending the CCH and disapproved the 2.00 hours requested for preparation for the CCH. The Texas Workers' Compensation Commission's (Commission) guidelines allow for participation in a CCH the time actually spent in the CCH plus 4.00 hours. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c)(6) (Rule 152.4(c)(6)). The three Orders taken together approved the actual time in the CCH (including travel time) plus 7.80 hours, a figure well in excess of the guidelines.

The guidelines allow 2.50 hours per month for communications. Rule 152.4(c)(2). Order No. 3 disapproved two items for communications during the month of October 1998. Order No. 1 and Order No. 2 approved 4.10 hours and 5.70 hours, respectively, for communications during that month, a figure well in excess of the guidelines. As to communications during the month of November 1998, Order No. 3 approved five items for a total of 2.30 hours and disapproved two items for a total of 0.80 hours. While this is 0.20 hours below the limit set by the guidelines, given that the three Orders approved 9.80 hours for the previous month, the approval of only 2.30 hours for November was not an abuse of discretion by the hearing officer.

The only other disapproved items were for travel expense for the CCH. The hearing officer disapproved \$3.25 in travel expense for CCH on September 30, 1998, for "Multiple Reasons" and approved only \$31.36 out of \$42.90 requested for travel expense for CCH on October 5, 1998, for the reason "Exceeded Guidelines." The only travel expenses allowed by the guidelines are for attending a benefit review conference (BRC) or CCH. Rules 152.5(b)(1) and 152.5(c)(1). The BRC in this case was held on August 13, 1998, and the CCH was held on October 5, 1998. Travel expenses for September 30, 1998, were, therefore, properly disapproved. Rule 152.1(b)(1) also provides that travel expenses are to be paid at the rate set for state employees in the General Appropriations Act. The attorney has not attempted to show, or allege, that the disapproved amount of \$11.54 in the travel item for October 5, 1998, was allowable under the General Appropriations Act. We find no abuse of discretion in the disapproval of this amount.

Finding no abuse of discretion by the hearing officer, we affirm Order No. 3.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge