

APPEAL NO. 990945

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 August 13, 1998. The issues at the CCH were whether the claimant sustained a compensable injury on _____, and whether the claimant has sustained disability. The hearing officer determined that the claimant sustained a compensable injury on _____, and that, with the exception of May 15, 1998, the claimant has sustained disability since May 13, 1998.

On April 20, 1999, the hearing officer issued a Commission Order for Attorney's Fees (order), covering services for the period from July 30, 1998, through January 14, 1999, approving 13.00 hours out of 13.25 hours requested, for a total approved fee, including expenses, of \$1,675.40 out of \$1,773.25 requested. One item of .25 hours for drafting a letter on August 28, 1998, was disapproved for the reason "Ex Guideline/Unreasonabl." Three expense items for cost of records were disapproved for the reason "Service Provided Unclear," and one expense item for travel to the CCH was reduced from the requested \$58.50 to \$50.40 for the reason "Exceeded Guidelines." The appellant (attorney) appeals (an amended appeal perfecting service on the respondent (carrier) was later also filed by the attorney's firm on the same grounds as the original appeal). The attorney argues that the .25 hours for drafting a letter to the carrier was reasonable and not excessive because the letter was an analysis of the just-received CCH decision and was crucial to ensure a timely appeal if an appeal was necessary. The attorney also argues that the requested expenses should have been approved in full.

DECISION

We affirm the order.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The only attorney time disapproved was .25 hours for drafting a letter to the carrier on August 28, 1998, which the attorney indicates involved an analysis of the hearing officer's decision upon its receipt, including whether an appeal might be appropriate. The Attorney Fee Processing System shows that the attorney did not file any justification text with her Application for Attorney's Fees (TWCC-152). The item was disapproved for the reason "Ex Guideline/Unreasonabl." The guidelines allow 2.50 hours per month for communications with the client and others involved in the case. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c)(2) (Rule 152.4(c)(2)). The order approved items in the category of communications totaling 2.50 hours for the month of August 1998. Thus, the disapproved item did exceed the guidelines. Rule 152.4(b) provides that an attorney may request, and the Texas Workers' Compensation Commission (Commission) may approve, a number of hours greater than that allowed by the guidelines if the attorney demonstrates to the satisfaction of the Commission that the higher fee was justified based on Sections 408.221 and 408.222. Rule 152.3(a) provides that additional justification must be attached to the

TWCC-152 for any fee which exceeds the guidelines. Since the item in question did exceed the guidelines and the attorney did not submit a justification text, the hearing officer did not abuse her discretion in disapproving this item.

Three expense items totaling \$58.50 for cost of records were disapproved for the reason "Service Provided Unclear." Rule 152.5(a) provides that the TWCC-152 must include an itemized list of expenses incurred, clearly identifying the nature of the expense. The attorney indicates in her appeal that these items involved copying expenses, delivery charges, and faxing charges specifically allowed under Rule 152.5. While Rule 152.5(b)(3) allows the cost of records necessary to prepare or present a claim or defense, Rule 152.5(c)(2) provides that the Commission shall not allow as attorney expenses overhead costs of operating a law office, including copies, fax, telecopier, postage, and shipping. This appears to apply to these items, including the \$25.00 for hand delivery of one set of documents to the attorney. We hold that the hearing officer did not abuse her discretion in disapproving these items. Texas Workers' Compensation Commission Appeal No. 94369, decided May 4, 1994; Texas Workers' Compensation Commission Appeal No. 94665, decided July 8, 1994. The final disapproved expense item involved disapproval of \$8.10 in travel expenses. Rule 152.5(b)(1) allows travel expenses, at the rate set by the legislature in the General Appropriations Act, for trips of more than 25 miles to a CCH. The attorney indicates in her appeal that the distance from her office in (city 1) to the (city 2) field office is "approximately ninety (90) miles." The attorney states that the rate charged was \$0.325 at the time of travel. We note that the General Appropriations Act (House Bill No. 1, as modified by three other bills, Acts of the 57th Legislature, Regular Session, 1997) provides in Article IX, Section 15, Subsection 1a that a state employee's mileage reimbursement rate, although tied to the federal income tax regulations, "may not be less than 25 cents per mile or more than 28 cents per mile." The difference in mileage rates between 32.5 cents per mile and 28 cents per mile, multiplied by the round trip of 180 miles between (city 1) and (city 2) totals \$8.10, the amount in dispute on this item. The hearing officer thus appears to have correctly applied the General Appropriations Act's travel regulations. We find no abuse of discretion by the hearing officer in disapproving \$8.10 out of \$58.50 requested for this item.

Finding no abuse of discretion by the hearing officer, we affirm the order.

Joe Sebesta
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge