

APPEAL NO. 990954

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 March 24, 1999. The issue at the CCH was whether the attorney's fee award for the respondents (attorneys) was appropriate. The hearing officer determined that the fees were neither unreasonable nor unnecessary and that the fee award was not excessive and affirmed the Commission Order for Attorney's Fees (Order). The appellant (claimant) appealed, contending that services were not performed and the hours approved exceeded the guidelines. The claimant asks that the attorneys be ordered to refund overcharges. The file contains no response from the attorneys.

DECISION

We affirm in part and reverse and render in part.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The attorneys generally submitted exhibits which verified their letters and other written documents covered by the Order. Their services were proven to the satisfaction of the hearing officer, who is the sole judge of the relevance and credibility of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The claimant raises a valid objection in his appeal when he notes that one item in the Order approves 1.00 hours on November 6, 1998, for the legal assistant to set up the file, while the guidelines allow only 0.5 hours for setting up the file and completing and filing forms. Since this was a case on which the attorneys and legal assistant performed all of the work charged for on one day and the attorneys were not involved in a benefit review conference or a CCH, we see no justification for exceeding the guidelines in this case. While the specific matter of the guidelines was not raised at the CCH, the basic issue was the reasonableness of the fees, which would certainly encompass the matter of the guidelines.

The decision and order of the hearing officer is reversed insofar as it approves 1.00 hours for setting up the file and a decision is rendered approving 0.50 hours for that item. The decision and order of the hearing officer is otherwise affirmed. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 125.3(g) (Rule 125.3(g)), the attorneys should refund \$25.00 to the claimant if they have been paid the fee originally approved by the Order.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge