

APPEAL NO. 991078

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 April 16, 1999. The issue at the CCH was whether any portion of the attorney's fees award under an order dated November 17, 1998, was excessive. The hearing officer determined that the award was excessive and that attorney's fees in the amount of \$300.00 are reasonable and necessary (the original order approved \$525.00 in attorney's fees). The appellant (attorney) appeals, contending that the hearing officer's finding of fact as to how many hours had been requested and approved was factually incorrect, that the hearing officer incorrectly determined that the letters sent by the attorney were form letters, and that the hearing officer's determinations as to how many hours were reasonable and performed are incorrect. The file contains no response from the respondent (claimant) or the carrier.

DECISION

We modify Finding of Fact No. 2 and affirm in part and reverse and render in part the decision and order of the hearing officer as modified.

Judging by the amount of the fee involved, the order in question is shown in the record as Hearing Officer's Exhibit No. 2. That order, Sequence No. 2, is dated November 17, 1998, and covers dates of service from November 4, 1998, through November 6, 1998, and shows 2.50 hours of attorney time and 3.00 hours of legal assistant time requested and approved, for an approved fee of \$525.00. The file also contains another order, Sequence No. 3, dated February 17, 1999, for periods of service from November 5, 1998, through November 24, 1998, approving 2.00 hours of attorney time out of 2.50 hours requested and 2.25 hours of legal assistant time, as requested, for a total approved fee of \$412.50 out of \$487.50 requested, and this order has the notation "H.O. Ex. 2" marked out on the lower right corner. Dispute Resolution Information System notes in the file also indicate that Sequence No. 1 is the order in dispute in this case. We therefore modify Finding of Fact No. 2 to read as follows:

By order dated November 17, 1998, a fee was approved for \$525.00 that included 2.50 hours of attorney time and 3.00 hours for legal assistant time for dates of service 11/04/98-11/06/98.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. As to the item of the 1.00 hour for the attorney to review the file with the legal assistant, the disallowance of this item by the hearing officer as excessive in view of the items for setting up the file and for completing an Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41), we do not find this action of the hearing officer to be an abuse of discretion. This 1.00 hour was described as time spent by the attorney and paralegal to determine if the attorney would represent the claimant. We question whether this can be considered a service provided to the claimant.

As to the legal assistant items other than the initial interview and the setting up of the

file, the hearing officer discusses all six of these 0.25-hour items as involving the attempt to get the claimant in to see a doctor. However, the attorney's counsel testified that the first two of these items (the third and fourth items under Communications) dealt with the search for a doctor and there was some dispute as to whether one of the other items was in fact a three-way call involving the termination of the attorney's services. Testimony of the attorney's counsel was that the other items involved trying to determine who was the carrier and that the claimant was not involved in and could have no direct knowledge about these telephone calls. Since Section 408.221(c)(6) lists the benefits the attorney is responsible for securing as only one of the factors to be considered by the hearing officer, we do find that her determinations as to the third and fourth items under Communications and one of the items under Informal Resolution are an abuse of discretion. Since all of the hearing officer's discussion of the other three 0.25-hour items is in terms of the search for a doctor and the evidence indicates that they involved a search for the identity of the carrier, we find no basis for the hearing officer's disallowance of these items. We therefore reverse the hearing officer's decision as to all six of these items and render a decision approving them.

We reform Finding of Fact No. 2 as previously stated. We reverse the decision and order of the hearing officer as to the six 0.25-hour items noted in the preceding paragraph and render a decision approving an additional 1.50 hours of legal assistant time, for an additional approved fee of \$75.00 and a total approved fee of \$375.00. The decision and order of the hearing officer is otherwise affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge