

## APPEAL NO. 991219

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 November 18, 1998. The issues at the CCH were injury, disability, timely notice of injury, and whether the carrier's contest of compensability was based on newly discovered evidence that could not reasonably have been discovered at an earlier date. The hearing officer determined that the claimant sustained a compensable aggravation injury to his lumbar spine on \_\_\_\_\_; the claimant had resulting disability from August 6, 1998, through September 6, 1998; the claimant reported the injury to the employer within 30 days or, alternatively, had good cause for not reporting the injury until August 4, 1998, and did report it on that date; and the carrier's contest of compensability was not based on newly discovered evidence that could not reasonably have been discovered at an earlier date.

On May 10, 1999, the hearing officer issued a Commission Order for Attorney's Fees (Order), covering services for the period from November 16, 1998, through November 23, 1998, approving 8.10 hours out of 16.60 hours requested, for a total approved fee, including expenses, of \$923.65 out of \$2,113.65 requested. One item for preparing for the CCH was disapproved for the reason "Ex Guideline/Unreasonabl," and two items for attending the CCH and for related travel time were disapproved for "Multiple Reasons." The appellant (attorney) appeals, reciting the attorney time involved and asking that the Appeals Panel reverse the Order and approve the disapproved items or remand to the hearing officer for further consideration. The file contains no response from the carrier or the claimant.

## DECISION

We reverse and remand.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(b) (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 those allowed by the guidelines if the attorney demonstrates to the satisfaction of the Commission that the higher fee was justified under Sections 408.221 and 408.222. Rule 152.3(a) requires that additional justification must be attached to the Application for Attorney's Fees (TWCC-152) for any fee which exceeds the guidelines. The Attorney Fee Processing System (AFPS) indicates that the attorney submitted a justification text. However, the justification text was not entered into the AFPS, which instead contains the notation "REC'D A LENGTHY LETTER." This brief notation is of no help whatsoever to the Appeals Panel in determining whether the hearing officer abused his discretion in disapproving the items in dispute. The AFPS also contains the following log text by the hearing officer:

TIME CLAIMED IN EXCESS OF GUIDES WAS DENIED. THE TIME CLAIMED WAS NEITHER REASONABLE NOR NECESSARY UNDER THE CIRCUMSTANCES. THE HOUR CLAIMED FOR TRAVEL EXPENSES WAS DENIED. THE ATTORNEY'S OFFICE AND THE [CCH] WERE BOTH IN (CITY).

The disapproved items were disapproved for exceeding the guidelines/being unreasonable or for multiple reasons. Without having the attorney's justification text before us, along with a statement of the hearing officer's reasons for disapproving those items in view of that justification text, we cannot determine whether the hearing officer abused his discretion in disapproving those items. We note that one disapproved item was for travel time, not travel expenses, as indicated in the hearing officer's log text. While the same reason would justify disapproval of travel time, we do not know whether there was some explanation in the attorney's justification text for the travel time in question.

Having no copy of the justification text before us and thus being unable to determine whether the hearing officer abused his discretion in disapproving the items in question, we reverse and remand for a CCH.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge