

APPEAL NO. 991399

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 June 15, 1999. The issue at the CCH was whether the attorney's fees awarded to respondent, (attorney), were excessive. The hearing officer determined that the fees were reasonable and necessary and that the attorney's hourly rate was reasonable. The claimant appeals, contending that the attorney's fees were excessive. Attorney responds that the Appeals Panel should affirm the hearing officer's decision. The appeal file does not contain a response from the carrier to the claimant's request for review.

DECISION

We affirm the hearing officer's decision and order.

Claimant contends that: (1) it was not reasonable for attorney to claim that she worked on claimant's file for five hours; (2) the letters sent by attorney were form letters that could have been done by administrative staff; (3) the second office visit was only a brief meeting; (4) calls to attorney's assistant were not "full-fledged consultations"; (5) attorney did not tell her that 25% would be deducted from her benefits checks; (6) claimant was already receiving temporary income benefits (TIBS) and medical benefits before she saw attorney; (7) attorney did not tell her that she would be charged for the initial consultation; and (8) claimant did not receive any benefit from attorney's representation.

It is undisputed that claimant hired attorney to represent her with regard to her workers' compensation claim. In a November 13, 1998, attorney's fee order, the Texas Workers' Compensation Commission (Commission) approved attorney's fees in the amount of \$750.00.

The record contains a "workers' compensation agreement and power of attorney" signed by claimant and dated September 8, 1998, which states that claimant assigns 25% of her claim to attorney in consideration for legal services to be rendered. Attorney testified regarding the meetings and telephone conferences she and her staff had with claimant, the times claimant came in to the office, the questions that claimant had, and the work she did regarding claimant's file.

Claimant testified that she never spoke to attorney on the phone, that she was already receiving benefits before she hired attorney, that she did not see all of the attorney/client contract she signed, and that she was not told that attorney's fees would be deducted from her benefits checks.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3(a) (Rule 152.3(a)) provides that to claim a fee, an attorney representing any party shall submit written evidence of the attorney's time and expenses on an Application for Attorney's Fees (TWCC-152). Section

408.221 provides that in determining whether a fee is reasonable, the Commission shall consider issues analogous to those listed under Section 408.221(c).

Subsection (b) of Section 408.221 states as follows:

(b) Except as otherwise provided, an attorney's fee under this section is based on the attorney's time and expenses according to written evidence presented to the commission or court. Except as provided by Section 408.147(c) [relating to contest of supplemental income benefits by insurance carrier; attorney's fees], the attorney's fee shall be paid from the claimant's recovery.

Rule 152.2 pertains to attorney's fees for representation of claimants. Subsection (b) of that rule provides as follows:

(b) For purposes of computing the maximum amount of a fee that may be fixed and approved for a claimant's attorney, "claimant's recovery" shall not include:

- (1) the amount of benefits paid to the claimant prior to hiring the attorney;
- (2) benefits initiated or offered by an insurance carrier when the initiation or offer is based upon documentation in a claimant's file, and has not been the subject of a dispute with the carrier;
- (3) any undisputed portion of impairment benefits paid or offered to the claimant based upon an impairment rating that is assessed by the carrier under the Act, Sec. 4.26(f);
- (4) the value of medical and hospital benefits provided to the claimant; or
- (5) lifetime income or death benefits when the carrier admits liability on all issues involved, and when the maximum benefit is tendered in writing by a carrier, no later than the date on which the carrier is required to contest the claim.

In Texas Workers' Compensation Commission Appeal No. 93640, decided September 10, 1993, we set forth the provisions of Rule 152.2(b) as stated above and observed that "[t]he 'claimant's recovery' expressly excludes these five instances from an inclusion in an award of an attorney's fee from the 25% limit of the claimant's recovery." Thus, except for the exception set forth in Section 408.147, which is not applicable to this case, a claimant's attorney's fees are to be paid from a claimant's recovery as set forth in

Section 408.221 and, for purposes of computing a claimant's attorney's fees, a claimant's recovery does not include those items set forth in Rule 152.2(b).

We review a hearing officer's determination regarding attorney's fees using an abuse of discretion standard. See Texas Workers' Compensation Commission Appeal No. 92481, decided October 21, 1992, and Texas Workers' Compensation Commission Appeal No. 92375, decided September 14, 1992. The burden is on the attorney to establish that the fees requested are reasonable and necessary. See Texas Workers' Compensation Commission Appeal No. 951731, decided November 16, 1995.

In this case, the attorney testified at the CCH and presented evidence regarding the issue presented: whether the fees may be approved under the statute and applicable rules. The hearing officer could find from the evidence that attorney established that she is entitled to the disputed legal fees. We conclude that the hearing officer did not abuse his discretion in awarding the \$750.00 in fees approved in this case. Based on the record before us, we perceive no error.

We affirm the hearing officer's decision and order.

Judy Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Elaine M. Chaney
Appeals Judge