

APPEAL NO. 991437

This appeal arises under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Appellant, the contested case hearing (CCH) attorney (CCH attorney) for the carrier, filed an application for her attorney's fees with the Texas Workers' Compensation Commission (Commission) pursuant to Section 408.222 for representing carrier under the 1989 Act. The fee application received by the Commission was for work from September 2, 1998, to January 21, 1999. On June 22, 1999, in a "COMMISSION ORDER FOR ATTORNEY'S FEES," WH approved \$1,737.12 of the \$2,455.87 requested (approved 13.25 hours of the 19 hours requested). On appeal, the appellate attorney requests that the Appeals Panel review the order and approve the fees that WH denied.

DECISION

We reverse and remand in part and reverse and render in part.

Appellate attorney contends that a total of 5.25 hours were denied and that the Appeals Panel should reverse the June 22, 1999, attorney's fee order and render a decision approving those fees. Appellate attorney asserts that CCH attorney made mistakes in applying for the fees, in that she (1) indicated that some work was for a CCH when it was actually for an appeal, and (2) indicated that some dates of service were in January 1998, when the correct dates of service were actually in January 1999.

The record reflects that there was an October 5, 1998, CCH in this case and that carrier filed a related request for review of the hearing officer's decision on November 30, 1998. The Appeals Panel's decision on appeal in this regard was filed on January 14, 1999.

The legislature has by statute required the Commission to approve an attorney's fee in workers' compensation matters. Sections 408.221 and 408.222. Commission rules implement these provisions. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 152.1 - 152.5 (Rules 152.1 - 152.5).

Section 408.222 provides that the Commission must approve the amount of attorney's fees for defending an insurance carrier in a workers' compensation action and identifies factors that must be considered. Commission rules suggest guidelines for maximum fees allowed for specific services performed by a carrier's attorney. Rules 152.3 and 152.4. The Act puts the burden on the defense attorney to present written evidence of time, expenses, and any other evidence considered necessary by the Commission or a court in order to make a determination on attorney's fees. Section 408.222(b).

The standard of review we apply to review an attorney's fees order on appeal is an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 92375, decided September 14, 1992. An award should not be set aside merely because

the appellate body would have allowed a different amount because "[t]he range of what is reasonable is wide[.]" Espinoza v. Victoria Bank & Trust Co., 572 S.W.2d 816, 828 (Tex. Civ. App.-Corpus Christi 1978, writ ref'd n.r.e.).

The CCH attorney sought to apply for attorney's fees for 3.50 hours of work performed on November 24, 1998. The order indicates that 3.50 in requested hours were for drafting and filing pleadings and that WH denied these fees for the stated reason "exceeded guideline/unreasonabl[e]." On appeal, appellate attorney states that the CCH attorney "miscoded" the work as "CC" on the application, mistakenly indicating that it was for fees relating to a CCH rather than fees relating to an appeal, which should have been coded "AL." The hearing officer apparently denied the 3.50 requested hours because fees had already been approved up to the guideline amount for the October 5, 1998, CCH in this case.

The record reflects that CCH attorney did certify that she mailed carrier's request for review to respondent (claimant) on November 24, 1998, and that this request for review was filed with the Commission on November 30, 1998. This coincides with the November 24, 1998, date of service for the 3.50 hours in requested fees. Therefore, it appears that there was miscoding in this case. The record does not reflect that any other fees were approved during that time period for an appeal filed by carrier regarding this case number. Rule 152.4 allows approval of fees for "[p]articipation in administrative appeal process" for five hours. Therefore, we reverse that portion of the June 22, 1999, order that denied the 3.50 requested hours for the date of service of November 24, 1998, and render a decision approving the 3.50 hours for appellate work with a date of service of November 24, 1998. We note that there was no response to the request for review regarding these requested attorney's fees.

Appellate attorney next contends that WH abused his discretion in denying 2.25 requested hours of fees. This included requested hours of 1.00 hours, and .25 hours for drafting and filing pleadings, which were denied for the stated reason, "date not in date range." Also included in the 2.25 hours were .25 in requested hours for receiving and reviewing documents and .25 in requested hours for drafting a letter to carrier, denied for the stated reason, "date not in date range." The 2.25 hours that were denied also included a total of .50 in requested hours for drafting two letters to carrier, which requested fees were denied for the stated reason "multiple reasons." The requested 2.25 hours were all for a (stated) date of service of "1/21/98." It is appellate attorney's contention that CCH attorney mistakenly indicated on the fee application that the date of service for the 2.25 hours denied was "1/21/98" when, in fact, the date of service for these denied fees was "1/21/99."

Regarding the total of .50 hours that were denied because of "multiple reasons," we do not have a sufficient basis to review this order. Texas Workers' Compensation Commission Appeal No. 962414, decided January 7, 1997. We reverse that part of the June 22, 1999, order that denied .50 hours for "multiple reasons," and remand for a hearing

regarding these fees so that a hearing officer may determine if these requested fees are reasonable and necessary.

Regarding the total of 1.25 hours of requested fees for drafting and filing pleadings which were denied for the stated reason "date not in date range," appellate attorney states that CCH attorney inadvertently indicated that the dates of service were in January 1998 rather than January 1999. It does appear that there was a mistake regarding the year of the date of service in this regard. It is a common mistake to enter the wrong (prior) year on a date written at the beginning of a new year. However, we are concerned that the Commission's records do not reflect what pleadings were drafted and filed in this case, with regard to the 1.25 hours requested for a "1/21/99" date of service. For this reason, we reverse that portion of the June 22, 1999, order that denied 1.25 hours of fees for drafting and filing pleadings, and remand for a hearing regarding these requested fees and what pleadings were drafted and filed by CCH attorney on or about January 21, 1999.

Regarding the total of .50 in requested hours for receiving and reviewing documents and drafting a letter to carrier, denied because the date was "not in date range," we note that the Appeals Panel did issue a decision on appeal on January 14, 1999. It appears that there was an inadvertent error in the entry of the wrong year on the attorney's fee application and that the proper date of service in this regard was "1/21/99." Therefore, we reverse that portion of the June 22, 1999, order that denied .25 in requested hours for receiving and reviewing documents and .25 in requested hours for drafting a letter to carrier, and render a decision approving .50 hours in fees.

We reverse the June 22, 1999, order and render a decision that the total hours approved are 17.25 as opposed to 13.25. We reverse that part of the June 22, 1999, order that denied .50 hours for "multiple reasons," and remand for a hearing regarding these fees so that a hearing officer may determine if these requested fees are reasonable and necessary. We reverse that portion of the June 22, 1999, order that denied 1.25 hours of fees for drafting and filing pleadings, and remand for a hearing regarding these requested fees and what pleadings were drafted and filed by CCH attorney on or about January 21, 1999.

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.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge