

APPEAL NO. 991485

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 14, 1999. The issues at the CCH were whether the claimant is entitled to supplemental income benefits (SIBS) for the first through the 11th compensable quarters and whether the claimant timely filed a Statement of Employment Status (TWCC-52) for the first through 11th quarters. The hearing officer determined that the claimant timely filed a TWCC-52 for the first through 11th quarters, but is not entitled to SIBS for the first through 11th quarters. Both parties appealed and the Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 991035, decided June 28, 1999, affirmed as to nonentitlement to SIBS for the first through 11th quarters and reversed and rendered a decision that the claimant did not timely file a TWCC-52 for those quarters.

On June 22, 1999, VH issued a Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (Order 1), covering services for the period from May 17, 1999, through May 28, 1999, approving no hours out of 3.70 hours requested, for a total approved fee of \$0.00 out of \$462.50 requested. All of the items dealt with review by the Appeals Panel and were disapproved for the reason "Ex Guideline/Unreasonabl." The appellant (attorney) appeals, citing the complexity of the case and indicating that the items in question were in connection with drafting a 14-page reply to the claimant's appeal which alleged 16 points of error. The attorney urges that the Appeals Panel reverse Order 1 and render a decision approving the attorney's fees requested. The file contains no response from the carrier or the claimant.

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. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(b) (Rule 152.4(b)) provides that an attorney may request, and the Commission may approve, fees in excess of the guidelines if the attorney demonstrates to the satisfaction of the Commission that the fees are justified under Sections 408.221 and 408.222. Rule 152.3(a) requires that written justification for any fee which exceeds the guidelines must be attached to the attorney's Application for Attorney's Fees (TWCC-152). The Attorney's Fee Processing System (AFPS) indicates that no justification text was submitted for the fees covered by Order 1. The AFPS shows the following log text by VH, "NO JUSTIFICATION FOR EXCEEDS GUIDELINES."

The AFPS also indicates that an earlier Commission Order for Attorney's Fees (Order 2) was issued on May 20, 1999, covering services on May 12, 1999, also dealing with review by the Appeals Panel (apparently the filing of the carrier's appeal), and approved 4.00 hours as requested, for a total approved fee of \$500.00. The guidelines allow 5.00 hours for participation in the administrative appeal process. Thus, one hour of

the requested time for Order 1 was within the guidelines and the other 2.70 hours was in excess of the guidelines. VH abused his discretion in disapproving one hour of the time requested which was within the guidelines. He did not abuse his discretion in disapproving the remaining 2.70 hours since no justification text was submitted.

We reverse Order 1 insofar as it disapproves 1.00 hour for receiving and reviewing documents on May 17, 1999, and render a decision approving that item, for a total approved time of 1.00 hour and a total approved fee of \$125.00. We affirm Order 1 insofar as it disapproved the other two items which totaled 2.70 hours.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge