

APPEAL NO. 981583

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 24, 1998. The hearing officer resolved the disputed issues by determining that the claimant sustained a compensable injury in the form of an occupational disease; that _____, is the date of the injury; that the claimant reported the injury to the self-insured not later than 30 days after the date of injury; and that the claimant had disability on November 21, 1997, and continuing through the date of the CCH. The self-insured appealed and the Appeals Panel reversed and remanded for further consideration of the date of injury and timely notice issues. Texas Workers' Compensation Commission Appeal No. 983006, decided February 9, 1999. On remand, without a second CCH, the hearing officer determined that the date of injury was _____, and the claimant had good cause for failing to report the injury until November 21, 1997. The self-insured again appealed and the Appeals Panel affirmed the hearing officer's decision on remand. Texas Workers' Compensation Commission Appeal No. 990899, decided June 7, 1999.

On July 12, 1999, VH issued a Commission Order for Attorney's Fees (Order 1), covering services for the period from January 8, 1999, through May 6, 1999, approving 0.00 hours out of 5.00 hours requested, for a total approved fee of \$0.00 out of \$750.00 requested. The two items submitted for review by the Appeals Panel were for performing legal research and for drafting and filing pleadings/documents on May 6, 1999, and were disapproved for "Multiple Reasons." The appellant (attorney) appeals, contending that the fees claimed are for services rendered in responding to the self-insured's appeal of the hearing officer's decision on remand. The attorney states that VH's response to a telephone call was that the system rejects second appeals. (No information was provided as to a correction of the system.) The file contains no response from the claimant or the self-insured.

DECISION

We reverse Order 1 and render a decision approving the fee as requested.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The Attorney Fee Processing System (AFPS) shows that an order dated January 25, 1999, (Order 2) approved five hours for drafting and filing pleadings/documents on January 7, 1999, in connection with review by the Appeals Panel. The records of the Texas Workers' Compensation Commission (Commission) indicate that the attorney's response to the self-insured's first appeal was received on January 11, 1999, and the attorney's response to the self-insured's appeal of the hearing officer's decision on remand was received on May 7, 1999. The Commission's records thus confirm the attorney's contention that the hours approved by Order 2 were for his response to the self-insured's first appeal and that the denied hours in Order 1 were for his response to the self-insured's appeal of the decision on remand. The AFPS does not show any other order approving fees in connection with

the attorney's response to the self-insured's appeal of the hearing officer's decision on remand.

The AFPS shows the following log text by VH concerning Order 1: "NO JUSTIFICATION FOR EXCEEDS GUIDELINES." The guidelines allow 5.00 hours for participation in the administrative appeal process. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c)(7) (Rule 152.4(c)(7)). Since there were two separate administrative reviews of this case by the Appeals Panel, the attorney is entitled to the 5.00 hours requested for responding to each of the two appeals, and VH abused his discretion in disapproving the 5.00 hours in Order 1.

We reverse Order 1 and render a decision approving the 5.00 hours requested in Order 1, for a total approved fee in Order 1 of \$750.00, as requested.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge