

APPEAL NO. 991584

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 May 18, 1998. The issues at the CCH were intoxication from a controlled substance and disability. The hearing officer determined that the claimant was injured in the course and scope of employment on _____; the injury did not occur while the claimant was in a state of intoxication from the induction of a controlled substance and the carrier is therefore not relieved of liability; and the claimant has had disability from January 29, 1998, to the date of the CCH resulting from the _____, injury. The carrier appealed and the Appeals Panel reversed and rendered a decision that the claimant was intoxicated at the time of his _____, injury and does not have disability.

On June 28, 1999, the hearing officer issued a Commission Order for Attorney's Fees (Order), covering fees for the period from July 8, 1998, through September 14, 1998, approving 4.50 hours out of 6.00 hours requested, for a total approved fee of \$562.50 out of \$750.00 requested. One item of 1.50 hours to draft and file pleadings/documents on July 16, 1998, was disapproved for the reason "Ex Guideline/Unreasonabl." Another item of 3.50 hours was approved for drafting and filing pleadings/documents on July 15, 1998. The appellant (attorney), through the firm for which she worked, appeals, contending that these items were miscoded on her Application for Attorney's Fees (TWCC-152) as participation in the CCH when they should have been coded as participation in an appeal to the Appeals Panel. The attorney asks that the Appeals Panel approve the disapproved 1.50-hour item. The file contains no response from the carrier or the claimant.

DECISION

Reversed and rendered.

The records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision which arose from the May 18, 1998, CCH involving the claimant was appealed by the carrier and that the Appeals Panel reversed and rendered. Texas Workers' Compensation Commission Appeal No. 981662, decided September 3, 1998. The carrier's appeal was received by the Appeals Panel on July 20, 1998, and the meter date on the envelope which contained it was July 16, 1998. This corresponds with the dates of the two items in question, July 15 and 16, 1998. In addition, the hearing had been held on May 18, 1998, with a hearing officer's decision later issued on June 29, 1998. Therefore, it appears that, as in Texas Workers' Compensation Commission Appeal No. 991437, decided August 5, 1999, which involved an appeal on the same basis, there was a miscoding in this case. The records of the Commission do not reflect that any other fees were approved for that appeal filed by the carrier regarding this case number. 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 the two items for July 15 and 16, 1998, for drafting and filing pleadings/documents total 5.00 hours, we determine that the disapproved item for 1.50 hours should have been approved.

We reverse the Order and render a decision approving the items for drafting and filing pleadings/documents on July 15 and 16, 1998, for an additional approved fee of \$187.50 and a total approved fee of \$750.00.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge