

APPEAL NO. 991585

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 September 15, 1998. The issue at the CCH was whether any portion of the attorney's fees of (Attorney 1) under two orders was excessive. At the CCH Attorney 1 withdrew his requests for attorney's fees under those orders. The hearing officer determined that the fees are therefore void and ordered Attorney 1 to refund fees under the two orders. Attorney 1 appealed and the Appeals Panel affirmed as reformed (as to the date for refund). Texas Workers' Compensation Commission Appeal No. 982579, decided December 15, 1998 (Unpublished).

On June 29, 1999, VH issued a Commission Order for Attorney's Fees (Order), covering fees for Attorney 2 for the period from August 17, 1998, through February 28, 1999, approving 15.25 hours out of 24.75 hours requested, for a total approved fee, including expenses, of \$1,990.81 out of \$3,178.31 requested. Attorney 2, attorney for the carrier, appeals through the law firm for which she worked, contending that the case was complicated and involved seeking a deposition from the respondent's (claimant) attorney, extensive discovery, and the claimant's attorney's seeking a temporary restraining order (TRO) against the carrier and the Texas Workers' Compensation Commission. The carrier's attorney asks that the disapproved 9.50 hours be approved. The claimant's attorney, on behalf of the claimant, responds that most of the carrier's attorney's work was outside the scope of the dispute on an attorney's fees order or was overreaching and excessive fees. The claimant's attorney states that the carrier's discovery extended to 53 attorney's fee orders, 51 of which had become final, that the carrier's attorney made slanderous statements about him, that he did not strenuously oppose attempts to depose him, that the hearing officer properly denied the motion to depose him, and that the previously mentioned fees TRO is unrelated to this attorney's fee dispute. The claimant's attorney asks that the fees request not be granted.

DECISION

We affirm the Order 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. All but one of the disapproved items were disapproved for the reason "Ex Guideline/Unreasonable." The other item, for a .25-hour telephone conference with the carrier on September 1, 1998, was disapproved as a duplicate service. While there was another item approved for a telephone conference of equal length with the carrier on the same date, there is nothing in the file to show that these were not two separate conferences. Mr. VH abused his discretion in disapproving this item and we reverse the Order as to that item and render a decision approving this .25 hour. We note that four other communications items in September 1998 were disapproved for exceeding guidelines. However, the guidelines allow 2.50 hours for communications each month, Tex.

W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c)(2) (Rule 152.4(c)(2)), and the approved items for September 1998, including the .25-hour items on which we reversed and rendered, total only 2.25 hours. We therefore approve the .25-hour item for a telephone conference with the hearing officer on September 15, 1998, so as to bring the total of approved items up to 2.50 hours for that month. While one item for communications in August 1998 was disapproved, 2.50 hours in that category were approved for that month.

Three items were disapproved for participation in the CCH. These items totaled 5.50 hours. However, the guidelines allow the actual time at the CCH plus four hours. Rule 152.4(c)(6). The Order approved items representing the actual time at the CCH plus four hours. The other two disapproved items were in the category of initial services, for which the guidelines allow a total of 1.50 hours. Rule 152.4(c)(1). While the approved items in this category in the Order total only .50 hours, this was not the only CCH dealing with this carrier and this claimant, and much of the initial work on the file may well have been covered in earlier orders. We will therefore not hold that the hearing officer abused his discretion in approving only one .50-hour item in this category on this Order.

Rule 152.4(b) provides that an attorney may request, and the Commission may approve, a number of hours greater than those allowed by the guidelines if the attorney demonstrates to the satisfaction of the Commission that the higher fee was justified pursuant to Sections 408.221 and 408.222. Rule 152.3(a) provides that the additional justification referred to in Rule 152.4(b) must be attached to the Application for Attorney's Fees (TWCC-152) for any fee which exceeds the guidelines. The Attorney Fee Processing System reflects that Attorney 2 did not submit any justification text with her TWCC-152. We will not consider on appeal justification which should have been, but was not submitted with the TWCC-152. We therefore hold that Mr. VH did not abuse his discretion in disapproving the items which we have not already specifically reversed.

We reverse and render as to the telephone conference on September 1, 1998, involving .25 hour and as to a telephone conference on September 15, 1998, also involving .25 hour, for a total additional approved time of .50 hour and an additional approved fee of \$62.50, and a total approved fee of \$2,053.31. The Order is otherwise affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge