

APPEAL NO. 991819

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 June 17, 1998. The issue at the CCH was whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. M on September 12, 1996, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The hearing officer determined that that determination of MMI and IR by Dr. M did become final under Rule 130.5(e); that the appellant's (claimant) back condition was misdiagnosed and inadequately treated but the claimant was aware of that before the 90-day time frame began to run and the claimant failed to timely dispute Dr. M's certification; and that the claimant reached MMI on August 16, 1996, with a zero percent IR. The claimant appealed and the Appeals Panel affirmed. Texas Workers' Compensation Commission Appeal No. 981573, decided August 26, 1998.

On August 2, 1999, (hearing officer) issued a Commission Order for Attorney's Fees (Order 1), covering services for the period from May 5, 1998, through June 22, 1999, approving 10.25 hours out of 14.00 hours requested, for an approved fee, including expenses, of \$1,300.43 out of \$1,769.18 requested. Three items dealing with communications were disapproved, one for the reason "Ex Guideline/Unreasonable" and two for "Multiple Reasons." One item under initial services was disapproved for the reason "Ex Guideline/Unreasonable." The appellant (attorney) appeals through the firm for which she worked, contending that the disapproved fees were within the guidelines and should be approved. The file contains no response from the carrier or the claimant.

DECISION

We affirm Order 1.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. On November 3, 1998, the hearing officer issued a Commission Order for Attorney's Fees (order 2), covering services for the period from May 5, 1998, through July 21, 1998. Among items approved in Order 2 were 2.50 hours on June 17, 1998, for preparing for a proceeding and 1.50 hours on June 17, 1998, for attending the CCH. Identical items were also approved by Order 1. Another item approved by Order 2 was 1.25 hours on June 15, 1998, for preparing for the CCH, which appears to possibly correspond with the denied item of the same amount of time and the same date for performing legal research which was denied in Order 1. Order 2 also approved 0.50 hour for a telephone conference on June 17, 1998, and 1.25 hours of initial services, including .50 hour for "Complete & file Claim For[m]." This last item appears to be a duplicate of the initial services item denied in Order 1. The attorney did not submit a justification text in connection with either order.

Thus it appears that two of the items denied in Order 1 are probably duplicates of items paid under Order 2 (1.25 hours on June 15, 1998, for legal research or preparation for the CCH and 1.25 hours on May 5, 1998, for completing and filing the claim form) and two items totaling 4.00 hours in connection with the CCH were paid both under Order 2 and under Order 1 (2.50 hours on June 17, 1998, for preparing for the CCH and 1.50 hours on June 17, 1998, for attending the CCH). Part (2.50 hours) of this duplication was paid in Order 2 under the category of communications, causing items in Order 1 to be disallowed for exceeding guidelines in that category. The duplicate payments for preparing for and attending the CCH on June 17, 1998, are not on appeal. However, given the submission of items in the wrong category as to both orders and the overall situation regarding both orders, we find no basis for the attorney's appeal and no abuse of discretion in (hearing officer's) denial of the disapproved items in Order 1. We therefore affirm Order 1.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR

Joe Sebesta
Appeals Judge

Dorian E. Ramirez
Appeals Judge