

APPEAL NO. 992033

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 21, 1999. The issues at the CCH were maximum medical improvement (MMI), impairment rating (IR), and disability during a certain period. The hearing officer determined that the claimant reached MMI on the statutory date of September 1, 1997; the correct IR is 26%; and as a result of the compensable injury the claimant had disability from February 1, 1996, to September 1, 1997. The claimant appealed regarding the date of the designated doctor's reexamination, contending it should be January 4, 1999, rather than January 11, 1999. The carrier cross-appealed concerning the MMI, IR, and disability determinations. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 991647, decided September 16, 1999 (Unpublished), affirmed as reformed (changing the date of the designated doctor's reexamination from January 11, 1999, to January 4, 1999).

On September 2, 1999, VH issued a Commission Order for Attorney's Fees (Order), covering services from July 19, 1999, through August 11, 1999, approving 3.40 hours out of 8.40 hours requested, for a total approved fee of \$391.00 out of \$966.00 requested. The only disapproved item on the Order is five hours on August 2, 1999, for drafting and filing pleadings/documents in connection with review by the Appeals Panel, which item was disapproved for the reason "Ex Guideline/Unreasonabl." The appellant (attorney) appeals the Order, contending that the denied item was within the guidelines. The appeal file contains no response from the carrier or the claimant.

DECISION

Reversed and rendered.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The Texas Workers' Compensation Commission's (Commission) 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)). The Commission's Dock_It computer system shows that the Request for Review in Appeal No. 991647, *supra*, was received on August 2, 1999, which corresponds with the date of the disputed item in the Order. A review of the Attorney Fee Processing System shows that no other orders deal with the filing of an appeal on August 2, 1999, dealing with this claimant. An earlier Order approved payment for filing an appeal on July 1, 1997, which is within one day of the filing of the Request for Review in Texas Workers' Compensation Commission Appeal No. 971249, decided August 18, 1997 (Unpublished), dealing with this claimant.

In Texas Workers' Compensation Commission Appeal No. 960710, decided April 11, 1996, we reversed a denial of fees for a second appeal involving different issues where a previous order had involved fees for an earlier appeal. See *also* Texas Workers' Compensation Commission Appeal No. 991628, decided September 17, 1999. Similarly, in the case at hand, any fees approved for appeals to the Appeals Panel involved an earlier appeal. This case involves an application for, and denial of, 5.00 hours for participation in the administrative appeal process of Appeal No. 991647, *supra*. As noted, the fees requested did not exceed the guidelines and VH abused his discretion in denying these fees.

We reverse the Order and render a decision approving the requested fees, for an additional approved time of 5.00 hours, an additional approved fee of \$575.00, a total approved time of 8.40 hours, and a total approved fee of \$966.00.

Thomas A. Knapp
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge