

APPEAL NO. 992034

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 July 21, 1999. The issue at the CCH was whether the claimant is entitled to supplemental income benefits (SIBS) for the 13th compensable quarter. The hearing officer determined that the claimant is entitled to SIBS for the 13th compensable quarter. The carrier appealed and the Appeals Panel affirmed. Texas Workers' Compensation Commission Appeal No. 991743, decided September 27, 1999, (Unpublished).

On September 2, 1999, the hearing officer issued a Commission Order for Attorney's Fees, covering services for the period from August 6, 1999, through August 11, 1999, approving 2.30 hours out of 7.50 hours requested, for a total approved fee of \$264.50 out of \$862.50 requested. Two items were disapproved, 5.00 hours for drafting and filing pleadings/documents on August 9, 1999, in connection with review by the Appeals Panel and .20 hour for a telephone conference with the adjuster on August 11, 1999. Both items were disapproved for the reason "Ex Guideline/Unreasonabl." However, the appellant (attorney) has appealed only the item dealing with review by the Appeals Panel, contending that that time was allowed under the guidelines. Therefore, we will consider only that item on appeal. The 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. 991743, *supra*, was received on August 12, 1999, which is three days after the date for the item in dispute. A review of the Attorney Fee Processing System shows that no other orders deal with the filing of an appeal on August 9 or 12, 1999. An earlier order approved payment for filing an earlier appeal dealing with this claimant. Texas Workers' Compensation Commission Appeal No. 990642, decided May 11, 1999, (Unpublished).

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 appeal 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. As noted, the fee requested on that item did not exceed the guidelines and the hearing officer exceeded his discretion in denying these fees.

We reverse the Order and render a decision approving the requested fee for filing the appeal for review by the Appeals Panel, for an additional approved time of 5.00 hours, an additional approved fee of \$575.00, a total approved time of 7.30 hours, and a total approved fee of \$839.50.

Thomas A. Knapp
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge