

APPEAL NO. 000185

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 January 5, 2000. The issue at the CCH was whether any of the attorney's fee award was excessive. The hearing officer determined that attorney's fees in excess of one hour of attorney time and .50 hours of paralegal time were excessive and that the one hour of attorney time and .50 hour of paralegal time was reasonable, necessary, and performed, and approved attorney's fees in the amount of \$175.00. The appellant (attorney) appeals, urging that the fees requested were not excessive, that the hearing officer must apply an abuse-of-discretion standard in reviewing the attorney's fee order, that the fact that the respondent (claimant) is dissatisfied because her telephone calls were not returned is not a basis for reduction of fees, and that the fees should be approved in the amount originally ordered. The file does not contain a response from the claimant or the carrier.

DECISION

We affirm the decision and order of the hearing officer, as modified.

We first deal with the issue of the proper standard of review. The attorney contends that the hearing officer must use an abuse-of-discretion standard in reviewing an order issued by someone other than a hearing officer, citing several cases for that proposition. We have reviewed those cases. They deal with the standard of review to be used by the Appeals Panel in reviewing the decision of a hearing officer concerning attorney's fees. In Texas Workers' Compensation Commission Appeal No. 91010, decided September 4, 1991, the Appeals Panel notes that the 1989 Act "does not provide a standard of review for the appeals panel to apply to a hearing officer's determination of attorney's fees." The Appeals Panel then applies the abuse-of-discretion standard used under the old workers' compensation law. In the case before us, the hearing officer held a CCH on attorney's fees, hearing the testimony of the claimant and admitting exhibits from both parties present. The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Section 410.165(a). While the hearing officer does not state what standard of evidence she applied, she appears to have used the standard of preponderance of the evidence. There was no error in her having done so.

On September 8, 1999, Ms. G, who is not a hearing officer, issued a Commission Order for Attorney's Fees (Order 1), covering services from August 20 through August 30, 1999, approving 1.00 hour of attorney time and .50 hour of legal assistant time, as requested, for a total approved fee, including expenses, of \$215.00.

On September 8, 1999, the Texas Workers' Compensation Commission issued a Commission Order for Attorney's Fees (Order 2), covering services from July 12 through September 1, 1999, approving 1.00 hour of attorney time and .50 hour of legal assistant time, as requested, for a total fee of \$175.00.

In her Statement of the Evidence, the hearing officer states:

Claimant testified that she contacted attorney, [appellant], to assist her in a benefit dispute and that she met with the attorney's legal assistant on July 12, 1999 for a "considerable amount of time" to discuss her workers' compensation claim. Claimant testified that she met with the attorney on August 20, 1999 for approximately 30 minutes and that she provided the medical documentation to the attorney at that time. Claimant testified that after that initial meeting, she continued to contact the attorney's office but that her calls were not returned. Claimant testified that she was extremely displeased with the representation from the attorney and that she terminated his services on September 28, 1999.

The hearing officer also states that the claimant did not sign a contract for services with the attorney until August 20, 1999. The hearing officer disapproved the \$40.00 for expenses for cost of records, noting that the only medical records included in the attorney's Exhibit No. 1 are from the doctor whose records the claimant says she furnished to the attorney. The hearing officer ends her Statement of the Evidence by concluding that:

Based on the credible evidence and testimony presented as to the services performed, the attorney is entitled to one hour of attorney time and .50 hours of legal assistant time for services performed from August 20, 1999 through September 1, 1999.

The hearing officer approved 1.00 hour of attorney time at a rate of \$150.00 per hour and .50 hour of legal assistant time at a rate of \$50.00, for a total approved fee of \$175.00.

While it would certainly have been preferable for the hearing officer to have stated in her findings of fact and her conclusions of law exactly which hours and which dates she was approving and which she was disapproving and for her to have specified the reason she disapproved the expense item, it is clear from her Statement of the Evidence that she weighed the credibility of the evidence presented at the CCH. Her disapproval of the \$40.00 expense item is supported by the testimony of the claimant and the copies of the claimant's treating doctor's records in the attorney's Exhibit No. 1. It is also clear that the hearing officer did not approve any attorney or legal assistant time prior to August 20, 1999, when the claimant signed a contract for representation by the attorney. Based on the record before us, we hold that the hearing officer did not abuse her discretion on approving the amount of attorney and legal assistant time that she did. We also note that the evidence includes a receipt for \$25.00 from the claimant in payment for the initial interview on July 12, 1999. The hearing officer does not address this in her decision. This amount should be considered part of the \$175.00 fee approved by the hearing officer.

Finding no abuse of discretion by the hearing officer, we affirm the hearing officer's decision and order as modified to include the payment of \$25.00 for the initial interview.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge