

APPEAL NO. 000380

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 12, 2000. The issues at the CCH were whether the attorney's fees ordered by the Texas Workers' Compensation Commission in two separate orders should be approved. The hearing officer determined that attorney's fees in the amount of \$425.00 (out of an original \$825.00) are reasonable and necessary and should be approved. The appellant (attorney) appeals, contending that the fees should have been approved in full. The appeal file contains no response from the respondent (claimant) or the carrier.

DECISION

We affirm in part and reverse and render in part.

The dispute in this case centered around the length of, and associated activities surrounding, the telephone calls which was a factual dispute for the hearing officer to resolve as the sole judge of the credibility of the witnesses and the weight to give to the evidence. Section 410.165(a). We are puzzled, however, by the hearing officer's reference to the claimant's not having telephone conferences on August 26 and September 16, 1999, since the telephone conferences listed for that date were with the adjuster, not the claimant. The confusion is compounded by the hearing officer's reference to "this date" when two different dates are being discussed. The claimant testified that she had no knowledge of either of these items. The hearing officer's denial of these two items, appearing to be an abuse of discretion, is reversed and they are approved for a total additional legal assistant time of .50 hour and an additional approved fee of \$25.00.

The hearing officer disallowed items on July 20, July 26, and November 1, 1999, connected with preparing of and filing for attorney's fees. The testimony of both parties indicated that, while some of the November 1, 1999, item dealt with attorney's fees, much of it dealt with other matters connected with closing the file. The hearing officer's disallowance of this item is an abuse of discretion and therefore reversed in part and .40 hours, of attorney time is approved for an additional approved fee of \$60.00. As to the remainder of this item and the other two items dealing with attorney's fees, we have held that the attorney is representing himself and not his client in such matters as filing for attorney's fees. See Texas Workers' Compensation Commission Appeal No. 93389, decided July 1, 1993. This also applies to one item, a letter of July 26, 1999, to the adjuster on the November 16, 1999, attorney's fees order which dealt with the attorney's fees and was properly disapproved. The other three items on that November 16th order are not duplicative services, as stated by the hearing officer but were, as urged by the attorney, a resubmission of items disapproved by the earlier November 5, 1999, order. The disallowance of these items is therefore reversed and they are approved, for a total additional legal assistant time of 1.00 hour and an additional approved fee of \$50.00.

As discussed previously, the hearing officer's decision is reversed and rendered insofar as it disallowed a total of 1.50 hours of legal assistant time and .40 hour of attorney time, for a total additional approved fee of \$135.00. The hearing officer's decision is otherwise affirmed. This results in a total approved fee of \$560.00.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Alan C. Ernst  
Appeals Judge