

APPEAL NO. 000495

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 September 15, 1999, with (hearing officer 1). The issues at the CCH were whether the claimant is entitled to supplemental income benefits (SIBS) for the first through the tenth quarters. The hearing officer determined that the claimant is not entitled to SIBS for the first through the fourth quarters, has not been entitled to SIBS for 12 consecutive months and thus ceased to be entitled to SIBS for the compensable injury, and is not entitled to SIBS for the fifth through the tenth quarters.

On February 11, 2000, (hearing officer 2) issued a Commission Order for Attorney's Fees (Order), covering services for the period from August 4, 1997, through November 5, 1997, approving 27.80 hours out of 31.40 hours requested, for a total approved fee, including expenses, of \$4,010.13 out of \$4,391.41 requested. The appellant (attorney) appeals, contesting the denial of two items totaling 3.80 hours of travel time denied for the reason "Service Provided Unclear" and one item of travel expense in the amount of \$7.28 denied for "Multiple Reasons." The attorney states that the travel was reasonable and necessary to take the depositions of the treating doctor and the designated doctor and that the travel time and the expense item should be approved. The appeal file contains no appeal or response from the carrier.

DECISION

We affirm the Order in part and reverse the Order in part and render a decision approving two of the disapproved items.

The attorney and another attorney filed a justification text with their Application for Attorney's Fees (TWCC-152). The justification text was just over one page long single-spaced. However, only the last sentence of this justification text, stating that the fees and expenses are reasonable, necessary, and justifiable, was entered in the Attorney Fee Processing System (AFPS). The justification text states as to the disapproved items:

On September 24, 1997, he [attorney] spent 1.6 hours traveling to and from the treating doctor's office for a deposition. On that day he also spent 2.0 hours participating in the deposition of the treating doctor. On September 25, 1997, [attorney] spent 2.0 hours traveling to and the designated office [sic] for his deposition and spent 2.1 hours participating in the deposition of the designated doctor.

While the reference to traveling to the office of the designated doctor is somewhat garbled, the context makes it clear what was intended. We note that hearing officer 2 approved the requested time for attending the two depositions. We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The services provided are quite clear from the

justification text. It was an abuse of discretion for hearing officer 2 to approve the time for taking the depositions and disapprove the travel time to attend them.

The other disapproved item was \$7.28 for "Travel Expense for CCH" on September 24, 1997, disapproved for "Multiple Reasons." Depositions were taken on September 24 and 25, 1997. The CCH was held on September 15, 1999. Hearing officer 2 did not enter a log text specifying the "Multiple Reasons" for disapproving the \$7.28. The Appeals Panel has approved attorney time for reasonable and necessary travel. However, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.5(c)(1) (Rule 152.5(c)(1)) prohibits reimbursement for the expense of attorney travel except to a benefit review conference (BRC) or a CCH more than 25 miles from the attorney's closest office as permitted by Rule 152.5(b)(1). The travel in question was not to a BRC or a CCH and therefore the expense for that travel is not a permissible expense under the provisions of Rule 152.1(b)(1) and Rule 152.1(c)(1). Even if the travel had been to a BRC or a CCH, it is evident from the amount that the travel was to a location less than 25 miles from the attorney's office.

The Order also reduced the rate requested for the legal assistant from \$60.00 per hour to \$50.00 per hour in accordance with Rule 152.4(d)(B). This has not been appealed and has become final.

We affirm the Order insofar as it denies the travel expense item. We reverse the Order in part and approve the time for travel related to taking both of the depositions for a total additional approved attorney time of 3.60 hours and a total additional fee of \$342.00. This results in a total approved fee of \$4,352.13.

Tommy W. Lueders
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Dorian E. Ramirez
Appeals Judge