

## APPEAL NO. 000789

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 March 15, 2000. The issue at the CCH was "should attorney's fees in the amount of \$262.50 ordered by the Commission [Texas Workers' Compensation Commission] on December 3, 1999, be approved." The hearing officer determined that attorney's fees in the amount of \$112.50 are reasonable and necessary for the dates of service from August 25 through November 30, 1999. The appellant (attorney) appealed, urging that the respondent (claimant) did not meet his burden of proof, that the hearing officer is substituting her opinion of the time it took to do various tasks for the time testified to by the attorney, that the hearing officer stated no basis for disallowing several items and ignored activities testified to by the attorney in connection with the letters and telephone calls on certain items, that the Dispute Resolution Information System (DRIS) notes are irrelevant to some items since they were not discussed with the Commission, that the claimant really wanted to complain about all the work he had to do after the attorney withdrew, and that the attorney's fees at issue are reasonable and necessary just to keep track of what was going on with the file. The attorney asks that the hearing officer's decision be reversed and a decision rendered that all unawarded fees be ordered to be paid. The appeal file contains no response from the claimant.

### DECISION

We affirm in part and reverse and render in part.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The attorney first contends that the claimant failed to meet his burden of proof. The Appeals Panel has held that the attorney has the burden of presenting a prima-facie case for his fees and then the claimant who is challenging the fees has the burden of proof. Texas Workers' Compensation Commission Appeal No. 982969, decided February 2, 1999. However, in the case at hand, the hearing officer stated that the burden of proof was on the attorney, referring to his name, and the attorney did not contest that statement and thus did not preserve any such error for appeal. Also, the hearing officer, as the sole judge of the evidence, determines whether the attorney has met his burden of proof to present a prima-facie case.

As to the disallowed time for two letters of August 25, and September 3, 1999, the letters themselves dealt with collection of the attorney's fees, an activity for which the Appeals Panel has held that an attorney may not charge an additional fee. Texas Workers' Compensation Commission Appeal No. 000380, decided April 5, 2000, and cases cited in that decision. As to the additional activities to which the attorney testified, the hearing officer is the judge of the credibility of the witnesses. Section 410.165(a). This also applies to the DRIS notes and the testimony of the attorney concerning activities which he states would not have been reflected in the DRIS notes. As to the claimant's motives in disputing

the attorney's fees, this also was a matter for the hearing officer to determine. The hearing officer did not abuse her discretion in not approving the fees for the August 25 and September 3, 1999, letters.

We next address the two letters, one to the claimant and one to the Commission, dated November 30, 1999, which the hearing officer disallowed because, "[f]ees to withdraw are not allowable." In Appeal No. 000380, *supra*, the Appeals Panel held that denial of a fee for activities in closing a file was an abuse of discretion. See *also* Texas Workers' Compensation Commission Appeal No. 91010, decided September 4, 1991; Texas Workers' Compensation Commission Appeal No. 91014A, decided September 20, 1991. Commission rules permit 2.5 hours per month for communications. The only evidence concerning the time related to those two letters is in the application for the attorney's fees and the attorney's testimony and indicates that .75 hours of legal assistant time was requested for drafting one letter and .50 hours was requested for drafting the other letter. We reverse the decision and order of the hearing officer insofar as it disallows these two items and render a decision approving them, for a total additional legal assistant time of 1.25 hours and a total additional approved fee of \$62.50. This results in a total approved fee of \$175.00.

We reverse the decision and order insofar as it disallows two items for drafting letters to close the file on November 30, 1999, and render a decision approving those two items for an additional approved fee of \$62.50 and a total approved fee of \$175.00.

Tommy W. Lueders  
Appeals Judge

CONCUR:

Robert W. Potts  
Appeals Judge

Philip F. O'Neill  
Appeals Judge