

APPEAL NO. 000875

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 December 8, 1999. The hearing officer determined that the claimant sustained a compensable injury on _____, and has sustained disability since August 23, 1999.

On March 31, 2000, the hearing officer issued a Commission Order for Attorney's Fees (Order), covering services for the period from November 2, 1999, through January 4, 2000, approving 15.20 hours out of 18.90 hours requested, for a total approved fee, including expenses, of \$1,950.40 out of \$2,347.03 requested. Eight items were disapproved for the reason "Ex Guideline/Unreasonabl." One expense item was partially disapproved for the reason "Exceeded Guidelines" while the other 10 expense items were disapproved for the reason "Service Provided Unclear." The appellant (attorney) appeals, contending that the hearing officer approved time for answering the claimant's interrogatories and then disapproved other communications time as exceeding guidelines. The attorney also contends that the services provided in the expense items were clear and that the remaining expense item, for travel expenses, was for out-of-pocket expenses and should be paid. The appeal file contains no response from the carrier or the claimant.

DECISION

We affirm in part and reverse and render in part.

The only legal assistant or attorney time items appealed are four items under the communications category during November 1999. No other legal assistant or attorney time items are appealed and, thus, two other items of attorney time for communications in December 1999 and the two items which were partially disapproved in connection with the CCH are not appealed and have become final. The Attorney Fee Processing System (AFPS) shows that the attorney submitted the following justification text:

THIS CASE REQUIRED ADDITIONAL TIME TO REPLY TO CLAIMANT'S INTERROGATORIES THAT WERE PROPOUNDED UPON CARRIER.

The AFPS indicates that no log text was entered by the hearing officer.

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 submitted six items under the category of communications for November 1999. Two items (including replying to the claimant's interrogatories) were approved for a total approved time of 1.50 hours. The other four items were disapproved and totaled 2.20 hours. The hearing officer clearly abused her discretion in not approving an additional 1.00 hour which was within the guidelines for this category, which allow 2.50 hours per month for communications with persons involved in the case. Tex. W.C. Comm'n, 28 TEX. ADMIN.

CODE § 152.4(c)(2) (Rule 152.4(c)(2)). The hearing officer did not enter a log text indicating her reasons, in view of the justification text for not allowing time in excess of the guidelines, and, for that matter, not allowing the time set by the guidelines. Without any indication that the hearing officer was applying any guiding principles in denying these fees, we find that she abused her discretion. We, therefore, reverse the denial of that 2.20 hours and render a decision that the attorney was entitled to these fees based upon the justification text.

Turning to the disapproved expenses, the hearing officer approved only \$50.40 out of \$62.00 requested for travel expenses for the CCH. The hearing officer has provided no basis for her denial of the out-of-pocket expenses and we, therefore, reverse her decision and render a decision that the attorney is entitled to the full \$62.00 requested.

The hearing officer disapproved three items for telephone calls to the client for 68¢, 32¢, and 28¢. We note that the hearing officer approved a total of 1.30 hours of attorney time for these telephone calls and she abused her discretion by denying these three expense items. The remaining seven expense items are for cost of records, denied for the reason "Service Provided Unclear." With only the description of "Cost of Records" and no further description in the justification text, the hearing officer did not abuse her discretion by disapproving these seven items.

We reverse the Order, in part, and render a decision approving, as previously described, an additional 2.20 hours for communications in November 1999 (resulting in an additional approved attorney's fee of \$275.00) and an additional \$12.88 in expenses for telephone calls to the client and travel expenses. The Order is otherwise affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge