

APPEAL NO. 000877

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Contested case hearings (CCH) were held on September 7, 1999, and January 5, 2000, respectively. The issues at the CCHs were whether the claimant is entitled to supplemental income benefits (SIBs) for the second and third quarters, respectively. The hearing officer determined that the claimant is not entitled to SIBs for the second quarter but is entitled to SIBs for the third quarter.

On March 31, 2000, the hearing officer issued a Commission Order for Attorney's Fees (Order), covering services for the period from August 17, 1999, through January 6, 2000, approving 16.20 hours out of 31.80 hours requested, for a total approved fee, including expenses, of \$1,943.68 out of \$3,582.09 requested. Nine items were disapproved for the reason "Ex Guideline/Unreasonabl"; and five expense items were disapproved, one for the reason "Exceeded Guidelines" and the other four for the reason "Service Provided Unclear." The appellants (attorneys) appeal, contending that the hearing officer appears to have given little or no consideration to the attorneys' justification text and asking that the Appeals Panel "approve the request for the entire 16.90 [sic] total hours of time submitted." The attorneys did not appeal the disapproval of the five expense items and the disapproval of those expense items has become final. The Attorney Fee Processing System (AFPS) shows the following justification text as filed by the attorneys:

ADDITIONAL PREPARATION TIME WAS REQUIRED IN THIS MATTER BECAUSE THE RECORDS WERE VOLUMINOUS. ALSO THIS MATTER INVOLVED TWO [CCHs] REQUIRING FURTHER WORK INCLUDING THE PREPARATION OF AN EXHIBIT LIST.

The AFPS indicates that no log text was filed 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 first item at issue is the time for attending the first CCH. The hearing officer approved 1.30 hours out of 2.10 hours requested. The CCH was scheduled to begin at 9:00 a.m., actually began at 9:04 a.m., and was concluded at 10:15 a.m. We determine that the hearing officer approved slightly more than the actual time of the CCH and did not abuse her discretion in disapproving the additional time requested. The next two items deal with preparation for and attendance at the second CCH. The hearing officer approved only 1.50 hours for preparation for the second CCH, which dealt with a separate SIBs quarter, and disapproved 4.00 hours for preparation and the entire requested time for attending the second CCH. Since this was a separate CCH on a different issue, the guidelines allow the actual time at the CCH plus 4.00 hours. The hearing officer, thus, abused her discretion in not approving an additional 2.50 hours for preparation and 1.50 hours for attending the second CCH. We, therefore, reverse the Order insofar as it denies these items and render a decision approving 2.50 hours for preparation for the second CCH and 1.50 hours for

attending the second CCH. Since that CCH only involved one quarter of SIBs, the hearing officer did not abuse her discretion in disapproving 1.50 hours over the amount allowed by the guidelines. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c)(6) (Rule 152.4(c)(6)).

The guidelines allow 2.50 hours per month for communications. The attorneys submitted three items totaling 4.20 hours for communications in August 1999 and the hearing officer totally disapproved all three items. She abused her discretion by not approving the 2.50 hours allowed by the guidelines. We, therefore, reverse the Order insofar as it disapproved the first of these three items and approve 2.50 hours out of the 3.00 hours in that item and render a decision approving 2.50 hours for that item. The last three items at issue are for communications in December 1999. The hearing officer approved one item for that month for .10 hour and disapproved three other items. The first disapproved item was for 3.50 hours. The hearing officer abused her discretion by not approving 2.40 hours out of that item. We reverse the Order insofar as it disapproves that item and render a decision approving 2.40 hours out of that item.

We reverse the order insofar as it disapproves the items previously specified and render a decision approving an additional 2.50 hours for preparation for the second CCH; an additional 1.50 hours for attending the second CCH; an additional 2.50 hours for communications on August 17, 1999; and an additional 2.40 hours for communications on December 17, 1999. The Order is otherwise affirmed. This results in an additional 4.00 hours of attorney time and an additional legal assistant time of 4.90 hours, for a total additional fee of \$745.00 and a total approved fee of \$2,688.68.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge