

APPEAL NO. 000933

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 14, 2000. The issues at the hearing were whether the claimant sustained a compensable injury on _____, and whether he had disability. The hearing officer determined that the claimant did not sustain a compensable injury and did not have disability.

On April 13, 2000, the hearing officer issued a Commission Order for Attorney's Fees (Order 2), covering services for the period from January 31 to February 25, 2000, approving .90 hours out of 22.00 hours requested, for a total approved fee of \$131.00 out of \$2,896.00 requested, the fees to be paid pursuant to Section 408.222 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). Texas Workers' Compensation Commission records reflect that on March 24, 2000, another Commission Order for Attorney's Fees (Order 1) was issued addressing the same items that are the basis of Order 2. Order 1 approved 5.00 hours of 8.50 hours requested for preparing for and attending the February 14th hearing. Order 1 also approved .70 hour of 4.00 hours requested for communications and 7.00 hours of 9.50 hours requested for travel time. In her appeal, the attorney argues that the hearing officer abused her discretion in denying the requested fees for her and her associate and asks that we render a new order approving the fees in total. The carrier did not respond to the appeal; however, the claimant filed a response in which he maintained that the appeal was untimely.

DECISION

We reverse Order 2 and render a decision approving the items not previously approved and ordering payment of an additional \$1,110.00 in fees.

Initially, we consider the claimant's assertion that the carrier's appeal is untimely. We find no merit in this assertion. Order 2 was mailed to the carrier's attorney on April 13, 2000. In her appeal, carrier's attorney states she received Order 2 on April 17, 2000, four days after it was mailed. We received the carrier's appeal of Order 2 on May 1, 2000, within the time limit for filing an appeal.

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 includes with her appeal a copy of the Application for Attorney's Fees (TWCC-152) for her and an associate, which included a justification text. In Order 2, the hearing officer disapproved all of the 8.50 hours for attending and preparing for the hearing. Order 1 approved 1.00 hour for attending the proceeding and 4.00 hours of preparation time, which corresponds with the guideline in Rule 152.4(c)(6). The hearing officer approved .90 hour and disapproved 3.10 hours for communications in Order 2. Order 1 had approved an additional .70 hour for communications. Thus, the total approved for communications was 1.60 hours between Order 1 and Order 2 and 2.40 hours for

communications remain unapproved. Rule 152.4(c)(2) provides a guideline of 2.50 hours per month for communications. In Order 2, the hearing officer denied all of the 9.50 hours submitted for travel time to attend the hearing. Order 1 approved 7.00 hours of the 9.50 hours requested; thus, 2.50 hours remain unapproved. Rule 152.4(c)(8) provides that for travel the "guideline" is "[a]ctual costs that are reasonable and necessary." As noted above, the attorneys submitted a justification text explaining why the fees they requested exceeded the guidelines. However, in denying the fees, the hearing officer did not address the justification text and it was an abuse of discretion for her not to do so. Accordingly, Order 2 is reversed and a new decision is rendered approving the fees requested that remain unapproved. Specifically, 3.50 hours for attending and preparing for the hearing are approved at \$130.00 per hour, for a total of \$455.00; 1.50 hours for communications are approved at \$130.00 per hour (\$195.00) and .90 hour for communications are approved at \$150.00 per hour (\$135.00) for a total of \$330.00; and 2.50 hours for travel is approved at \$130.00 per hour, for a total of \$325.00.

Order 2 is reversed and a new decision is rendered approving the additional \$1,110.00 in fees that was not approved in either Order 1 or Order 2.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

CONCUR IN RESULT:

Judy L. Stephens
Appeals Judge