

APPEAL NO. 000992

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 April 10, 2000. The issue at the CCH was whether any portion of the attorney's fee award of January 27, 2000, was excessive. The hearing officer determined that \$1,725.00 of the \$1,875.00 originally awarded was reasonable, necessary, and performed. The appellant (claimant) appeals, contending that the respondent (attorney) did not put in 11.50 hours on the claimant's workers' compensation case and that the attorney is charging under the workers' compensation case for work he did on another case for the claimant. The attorney responds that the claimant's appeal is untimely because a copy was not served on the attorney until 19 days after receipt of the hearing officer's decision; that the hearing officer did not abuse her discretion in approving the fees she did approve because they are well within the guidelines and there is ample proof that the services were reasonable, necessary, and performed; that the hearing officer should have approved the 1.00 hour of attorney time that she disapproved; and that the Appeals Panel should deny the claimant's request for review, affirm the hearing officer's decision to the extent that it allowed 11.50 hours, and reverse and render a decision approving the 1.00 hour which the hearing officer disapproved. Since the attorney's response was not filed within the 15-day period for filing an appeal, we do not consider his request to approve the one hour that was disapproved by the hearing officer.

DECISION

We affirm the decision and order of the hearing officer.

The attorney contends that the claimant's appeal is untimely because it was not timely served on the attorney. We have held that this does not render the appeal untimely. Texas Workers' Compensation Commission Appeal No. 92397, decided September 21, 1992. It merely extends the time for the other party to file a response. The claimant's appeal was timely filed with the Texas Workers' Compensation Commission.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The claimant contended that he was billed under workers' compensation for work done by the attorney on his property damage claim against an insurance company and that he was not present in the attorney's office on December 29, 1999, a date he was billed for an office conference. The attorney presented office documents and pleadings showing part of his work on the claimant's workers' compensation case, including one document related to the claimant's workers' compensation case signed by the claimant and notarized on December 29, 1999. The attorney testified that all services billed for were performed on the claimant's workers' compensation case and explained why the services were necessary and reasonable. The hearing officer heard the claimant's testimony concerning his belief that some legal services billed for were not in connection with his workers' compensation case. The hearing officer is the trier of fact and is the sole judge of the relevance and

materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). We conclude that the claimant has not shown that the hearing officer abused her discretion in approving \$1,725.00 in attorney's fees. We note that after the billing period in dispute, the attorney was ultimately successful in having the Appeals Panel render a decision in favor of the claimant on the disputed issues of bona fide offer of employment and disability. The claimant complains about the adequacy of the ombudsman's assistance. We do not generally review whether an ombudsman satisfactorily assisted an employee. Texas Workers' Compensation Commission Appeal No. 981823, decided September 18, 1998.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Judy L. Stephens  
Appeals Judge