

APPEAL NO. 001489
FILED AUGUST 11, 2000

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 January 5, 2000, in _____, Texas, with _____ presiding as hearing officer. She determined that the claimant's compensable injury of _____, extends to and includes her left breast but the left breast injury is limited to bruising. On June 14, 2000, the hearing officer issued a Commission Order for Attorney's Fees (Order) covering services for the period from December 3, 1999, through January 6, 2000, approving 12.50 hours out of 15.80 hours requested, for a total approved fee, including expenses, of \$1,474.54 out of \$1,782.04 requested. The appellant (attorney) appeals, contending that little or no consideration was given to the justification text submitted, that less than the guideline amounts was approved for preparation for the CCH and for December communications, and that the entire total hours of time submitted should be approved.

DECISION

We affirm the Order in part and reverse and render in part.

The attorney submitted a justification text, which consisted of the following:

ADDITIONAL TIME WAS SPENT TO RESEARCH THE CLAIMANT'S MEDICAL CONDITION FROM HER CLAIM OF INJURY TO HER BREAST FROM A FALL.

The hearing officer entered the following log text:

EXCEEDING GUIDELINES NOT SUFFICIENTLY JUSTIFIED IN THIS CASE, WHICH PRESENTED NO NOVEL LEGAL OR FACTUAL ISSUES.

In the category of participation in the CCH, the hearing officer approved 1.50 hours for attending the CCH; approved 3.20 hours for preparing for the CCH on December 6, 1999; approved .80 hour out of 1.70 hours for performing legal research on December 3, 1999; and disapproved 1.00 hour for preparing for the CCH on January 4, 2000. Thus, the hearing officer did approve the actual time at the CCH plus 4.00 hours, as provided for in the guidelines. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c)(6) (Rule 152.4(c)(6)). Given the minimal nature of the justification text, the hearing officer did not abuse her discretion in approving only the number of hours provided for in the guidelines for participation in the CCH.

In the category of communications for December 1999, the hearing officer approved two items totaling 2.00 hours for communications on December 8, 1999, and

disapproved the next two items totaling 1.40 hours for communications on December 8, 1999. The hearing officer thus approved less than the number of hours allowed by the guidelines for communications for December 1999. Rule 152.4(c)(2). The hearing officer stated no basis for allowing less than the 2.50 hours allowed by the guidelines. She should have approved .50 hour out of the .90 hour requested for receiving and reviewing documents on December 8, 1999.

The Appeals Panel applies an abuse of discretion standard in reviewing a hearing officer's determination of attorney's fees. Texas Workers' Compensation Commission Appeal No. 92481, decided October 21, 1992 (Unpublished); Texas Workers' Compensation Commission Appeal No. 92375, decided September 14, 1992. Finding no abuse of discretion concerning the approval of no more than the hours provided in the guidelines for preparation for and participation in the CCH, we approve that portion of the Order. The hearing officer did abuse her discretion in approving less than the hours provided in the guidelines for communications in December 1999. We therefore reverse the denial of the item for receiving and reviewing documents on December 8, 1999, and approve an additional .50 hour for that item. This results in approval of an additional .50 hour of legal assistant time, for an additional approved fee of \$25.00 and a total approved fee of \$1,499.54.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge