

APPEAL NO. 001739

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 May 4, 2000, with the record closing on May 11, 2000. The issues at the CCH were extent of injury, waiver, disability, maximum medical improvement (MMI) and impairment rating (IR). The hearing officer determined that the claimant's compensable injury of _____, extends to and includes the claimant's cervical spine; the carrier waived its right to dispute the compensability of the claimant's cervical spine injury by failing to timely dispute the compensability of such injury; the claimant had sustained disability since October 24, 1999; and the claimant may not have reached MMI at this time, rendering any determination of his IR premature.

On July 14, 2000, the hearing officer issued a Commission Order for Attorney's Fees (Order), covering services for the period from May 1 through May 13, 2000, approving 10.40 hours out of 15.40 hours, for a total approved fee, including expenses, of \$1,851.28 out of \$2,601.28 requested. Two items were disapproved in part. The hearing officer approved 1.50 out of 2.00 hours to attend the CCH on May 4, 2000, and 6.00 hours out of 10.50 hours for travel time on the same date. These items were partially disapproved for the reason "Ex Guideline/Unreasonabl." The appellant (attorney) appealed, contending that all the attorney fees requested and travel time were reasonable and justified, that the hearing officer abused her discretion in denying the requested fees and expenses and requested the Appeals Panel to render a new order approving the requested fees in total. The unapproved fee amount was \$750.00. The appeal file contains no response from the carrier or the claimant.

DECISION

We affirm the order.

The Appeals Panel reviews attorney's fee cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 91010, decided September 4, 1991. The attorney's justification text reads in relevant part as follows:

In some instances it was necessary for counsel for carrier to exceed the maximum recommended hourly fee guidelines promulgated by the Texas Workers' Compensation Commission [Commission] to thoroughly and effectively prepare for [CCH] on behalf of carrier, including review of medical records[;] [Commission] documents; prepare case outline; complete testimony, cross examination and exhibits. Carrier's attorney incurred time and expense for travel from Dallas to Beaumont to attend [CCH]. For these reasons, we are asking that the attorney's fees be approved.

The attorney recites in her appeal that her flight from Dallas to Beaumont departed at 8:10 a.m. and she arrived at the airport at 7:13 a.m. She wrote that her return flight scheduled for a 4:10 p.m. departure from Beaumont was delayed by 1.5 hours because of severe weather and she arrived at DFW airport at 6:57 p.m. She claimed 10.5 hours for travel time between Dallas and Beaumont (6:45 a.m. through 7:15 p.m. minus 2 hours for the CCH) was reasonable and justified.

The Attorney Fee Processing System indicates that the hearing officer did not enter a log text. The only part of the justification text dealing with the disapproved hours is the part which states that the attorney "incurred time . . . for travel from Dallas to Beaumont to attend [CCH]." Since the airline itinerary/receipt and the Dallas airport parking receipt are separate exhibits from the Application for Attorney's Fees (TWCC-152), we cannot assume that the hearing officer had before her at the time she issued the Order the parking receipt showing that the attorney arrived for her initial flight at the Dallas/Fort Worth airport at 7:13 a.m. and arrived on her return flight at 6:57 p.m. The copy of the attorney's TWCC-152 which she attaches to her appeal as Exhibit A does not include a copy of the airport parking receipt. Rather, it is separately submitted as Exhibit D. The justification text, which the hearing officer did have before her when she issued the Order, did not include any information about bad weather causing delays on the return flight or that the attorney arrived at the airport an hour prior to her departure. The airline itinerary/receipt, similarly separately submitted as Exhibit C shows approximately 10 hours of travel time, but it is not a part of the TWCC-152 submitted with the attorney's appeal and was apparently not before the hearing officer when she issued the Order. The hearing officer did not disregard the attorney's justification text in disapproving the 4.50 hours of travel time and did not abuse her discretion in light of the information before her when she issued the Order.

The Commission's guidelines allow the actual time in the CCH plus 4.00 hours for participation in the CCH. The additional 4.00 hours is generally for preparation for the CCH. On the tape of the CCH the hearing officer stated that the hearing started at 1:35 p.m. and that it ended at 3:00 p.m. The hearing officer approved 1.50 hours for attending the CCH. The record of the CCH shows that was the actual time that the CCH lasted. The hearing officer did not abuse her discretion in approving only the actual time at the CCH.

Finding no abuse of discretion, the Order is affirmed.

Kathleen C. Decker
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge