

APPEAL NO. 001740

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 17, 2000. The issues at the CCH were injury and disability. The hearing officer determined that the claimant suffered a new injury on _____, which is limited to a minor aggravation of the condition of her T12-L1 disc and does not include the other body parts which she alleges were injured. The carrier appealed the compensability determinations and the claimant appealed the extent-of-injury determinations. The Appeals Panel affirmed the hearing officer's decision in Texas Workers' Compensation Commission Appeal No. 001355, decided July 31, 2000.

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 19, 2000, approving 13.80 hours out of 20.00 hours requested, for a total approved fee, including expenses, of \$2,045.07 out of \$2,857.07 requested. Two items were disapproved in part. The hearing officer approved 3.50 out of 6.10 hours to prepare for the CCH on May 12, 2000. The hearing officer also approved 6.00 hours out of 7.40 hours requested for travel time for the CCH. One item for .50 hour to perform legal research on May 12, 2000, was disapproved. Two items for drafting letters on May 18, 2000, were disapproved. These items were all disapproved for the reason "Ex Guideline/Unreasonabl." The appellants (attorneys) appeal, contending that the hearing officer's failure to approve all of the requested fees is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust because those fees are reasonable and justified and that the hearing officer abused her discretion by not addressing the justification text. The appeal file contains no response from the carrier or the claimant.

DECISION

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

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 guidelines promulgated by the Texas Workers' Compensation Commission [Commission] to thoroughly and effectively prepare for [CCH] on behalf of carrier, including review of documents exchanged with claimant; review medical records from various providers, [Commission] documents; prepare case outline; complete testimony, cross examination and exhibits. Carrier's attorney conducted research on aggravation of pre-existing condition. 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 hearing officer entered the following log text:

JUSTIFICATION OFFERED INSUFFICIENT UNDER CIRCUMSTANCES OF THIS CASE, WHICH PRESENTED NO NOVEL ISSUES OF LAW OR FACT.

The Commission's guidelines allow the actual time in the CCH plus 4.00 hours for participation in the CCH. The hearing officer did not abuse her discretion in approving only the actual time at the CCH plus 4.00 hours as the guidelines prescribe. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c)(6) (Rule 152.4(c)(6)). The hearing officer was familiar with the legal and factual issues in the case and determined that the attorneys' justification text was not sufficient to justify .50 hour in addition to those set by the guidelines. She did not abuse her discretion in making that determination. The hearing officer addressed the attorneys' justification text in her log text. The issues in the claimant's case do not appear to be novel or unusually difficult.

The hearing officer approved only 2.30 hours for communications for May 2000. The guidelines for communications allow 2.50 hours per month. Rule 152.4(c)(2). The hearing officer abused her discretion in not approving the full 2.50 hours. We, therefore, reverse the hearing officer to the extent of approving .20 hour out of 1.40 hours requested for drafting a letter on May 18, 2000.

The remaining item is the disapproved 1.40 hours of travel time for the CCH. The attorneys' justification text merely notes that the attorney incurred travel time from Dallas to Beaumont for the CCH. Given this amount of information which was before the hearing officer when she issued the Order, we do not believe she abused her discretion in reducing the travel time requested.

We reverse the Order insofar as it disapproves all of the 1.40 hours requested for drafting a letter on May 18, 2000, and approves .20 hour out of the 1.40 hours requested for that item. The Order is otherwise affirmed. This results in additional approved attorney time of .20 hour and an additional approved fee of \$26.00, for a total approved fee of \$2,071.07.

Finding no abuse of discretion, the Order is affirmed in part and reversed and rendered in part as noted above.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge