

APPEAL NO. 001761

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 13, 2000. The issues at the CCH were injury and disability. The hearing officer determined that the claimant did not sustain a compensable injury on _____, and has sustained no disability.

On July 17, 2000, the hearing officer issued a Commission Order for Attorney's Fees (Order), covering services for the period from October 31, 1999, through March 24, 2000, approving 19.50 hours out of 22.50 hours requested, for a total approved fee, including expenses, of \$2,135.40 out of \$2,840.90 requested. The hearing officer approved 1.00 hour out of 3.00 hours requested for preparing for the CCH on November 12, 1999, and 1.00 hour out of 2.00 hours requested for the same purpose on November 19, 1999. The reason given in both instances was "Ex Guideline/Unreasonabl." As to expenses, the hearing officer approved \$50.40 out of \$65.00 requested for travel expense for the CCH for the reason "Exceeded Guidelines" and disapproved six items for cost of records for the reason "Service Provided Unclear." The appellants (attorneys) appeal the disapproval of preparation time and of the copying expenses. 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 attorneys submitted the following justification text:

ADDITIONAL CCH PREPARATION TIME WAS NECESSARY IN THIS CASE BECAUSE OF THE VOLUMINOUS FILE.

The hearing officer entered the following log text:

NOT REASONABLE/NECESSARY TO EXCEED GUIDELINES TO THE FULL EXTENT REQUESTED; EXPENSES DENIED AS APPEARING TO CONSTITUTE PHOTOCOPYING COSTS PROHIBITED BY RULES.

While Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.5(b)(3)(Rule 152.5(b)(3)) allows reimbursement for the cost of records necessary to prepare or present a claim or defense, such as copies of Texas Workers' Compensation Commission (Commission) files and copies of certificates and licenses, Rule 152.5(c)(2) provides that the Commission shall not allow as attorney expenses overhead costs of operating a law office, including copies, fax, telecopier, postage, and shipping. Texas Workers' Compensation Commission Appeal No. 94369, decided May 4, 1994; Texas Workers' Compensation Commission Appeal No.

94665, decided July 8, 1994. The attorneys in their appeal confirm that the disputed expense items involved copying expenses. The hearing officer properly disapproved these items. The hearing officer's disapproval in part of the travel expense item has not been appealed and has become final.

The two remaining items are for preparation for the CCH. The Commission's guidelines allow for participation in a CCH, the actual time in the CCH plus 4.00 hours. We note that the hearing officer approved the actual time in the CCH plus 5.00 hours. She, thus, approved preparation time which exceeded the guidelines by 25%. The hearing officer was familiar with the complexity of the case. She did not abuse her discretion by not approving a greater amount of time for this category.

Finding no abuse of discretion by the hearing officer, the Order is affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge