

## APPEAL NO. 002001

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 July 3, 2000. The issues at the CCH were injury, disability, and average weekly wage (AWW). The hearing officer determined that the claimant did not sustain a compensable lower back injury on \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_, \_\_\_\_\_, or on any other date, the claimant did not, therefore, have disability, and the claimant's AWW is \$259.54.

On August 1, 2000, the hearing officer issued a Commission Order for Attorney's Fees (Order) , covering services for the period from May 22, 2000, through July 5, 2000, approving 22.00 hours out of 44.40 hours requested, for a total approved fee, including expenses, of \$2,845.10 out of \$5,309.10 requested. The appellants (attorneys) appeal, urging that the (city) field office erred by not setting up a CCH as requested by the attorneys, stating that their Application for Attorney's Fees (TWCC-152) included a justification text, and contending that all of the fees requested were reasonable and necessary. 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.

We deal first with the question of whether a CCH or an appeal to the Appeals Panel is appropriate in this case. The field office was correct in not holding a CCH and instead having the attorneys file a request for review by the Appeals Panel. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3(d) (Rule 152.3(d)) states that, except as provided in Rule 152.3(e), an attorney who contests the fee fixed and approved by the Texas Workers' Compensation Commission (Commission) shall request a CCH. The cited Rule 152.3(e) provides that an attorney who contests the fee ordered by a hearing officer after a CCH shall request review by the Appeals Panel. Since the Order was issued by a hearing officer after a CCH, Rule 152.3(e) applies and the proper remedy for the attorneys was a request for review by the Appeals Panel. We note that attorney Russell B. Power was given the opportunity at the end of the underlying CCH to present evidence on attorney's fees and indicated that he would prefer to submit a justification text in support of his attorney's fees.

We next deal with the issue of whether the attorneys' TWCC-152 included a justification text. The copy of the TWCC-152 filed with the attorneys' appeal includes three 1 ½-page "Billing Reports." The Attorney Fee Processing System (AFPS) indicates that no justification text was filed. The AFPS also indicates that the hearing officer entered the following log text:

[HEARING OFFICER] HAS NOTED THE ATTORNEY FOR CARRIER DID NOT ATTACH JUSTIFICATION TEXT AND THE GUIDELINES WERE EXCEEDED IN A NUMBER OF ENTRIES. [HEARING OFFICER] HAS

REVIEWED THE RECORD OF THE PROCEEDINGS. [HEARING OFFICER] HAS DETERMINED AND IS OF THE OPINION THAT THE ATTORNEY FEES AND EXPENSES AS APPROVED WERE REASONABLE NECESSARY AND PERFORMED; EXCEPT 22.40 HOURS OF ATTORNEY TIME THAT EXCEEDED THE GUIDELINES AND NO JUSTIFICATION TEXT WAS ATTACHED.

In Texas Workers' Compensation Commission Appeal No. 972323, decided December 22, 1997, an attorney was seeking fees in excess of the guidelines and the Appeals Panel stated:

Second, in his appeal the attorney appears to identify an explanation of the activities undertaken for which a fee was charged with justification of the time spent in excess of the guideline maximums. Thus, he essentially contends that since there was no contrary or opposing evidence, he is entitled to the fee requested. Regardless of whether or not there is opposition to his fee request, the attorney has the burden of justifying fees above the guidelines "as reasonable and necessary." Section 408.222(a). Simply saying what a fee is for does not, in itself, make the fee reasonable and necessary.

In Texas Workers' Compensation Commission Appeal No. 000404, decided April 5, 2000, the Appeals Panel stated that a client billing worksheet was not a justification text because it did not provide justification for exceeding the guidelines. In the case before us, the AFPS indicates that no justification text was submitted. The attorney included three "Billing Reports" with his appeal. The "Billing Reports" state the service that was provided for each requested attorney's fee, but they do not state why it was reasonable and necessary to exceed the guidelines in providing those services. The hearing officer did not consider these "Billing Reports" to constitute a justification text. We review attorney's fee cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The hearing officer did not abuse his discretion in not considering them as justification texts.

Considering the categories in which some hours were disapproved, the hearing officer approved the actual time at the CCH plus 4.50 hours, which is in excess of the 4.00 hours in the guidelines. Rule 152.4(c)(6). The guidelines allow 2.50 hours per month for communications. All of the hours requested for the months of May and July 2000 were approved. However, for the month of June 2000 only .50 hour was approved and 12.00 hours were disapproved. The attorney was entitled to an additional 2.00 hours under the guidelines in this category. We therefore reverse the Order insofar as it disapproves all 2.30 hours for drafting a letter to an adjuster on June 8, 2000, and approve 2.00 hours of that item. This results in an additional 2.00 hours of attorney time and an additional fee of \$220.00, for a total approved fee of \$3,065.10.

We reverse the Order insofar as it disapproves the item just specified and approve 2.00 hours of that item for an additional 2.00 hours of attorney time and an additional fee of \$220.00. The Order is otherwise affirmed.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge