

APPEAL NO. 002203

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 12, 2000, with (hearing officer 1). The issue at the CCH was whether the claimant was entitled to supplemental income benefits (SIBs) for the fourth quarter. The hearing officer determined that the claimant is entitled to SIBs for the fourth quarter. The respondent (carrier) appealed; the Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 000220, decided March 22, 2000, reversed and remanded, and hearing officer 1, in a decision and order on remand, again determined that the claimant is entitled to SIBs for the fourth quarter.

On June 5, 2000, Mr. H issued a Commission Order for Attorney's Fees (Order), covering services from January 28, 2000, through April 19, 2000, approving 33.00 hours, as requested, for a total approved fee of \$4,625.00, as requested, to be paid by the carrier pursuant to Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The carrier requested a CCH to contest the Order.

A CCH was held on August 22, 2000, with (hearing officer 2) presiding as hearing officer. The issue at the CCH was whether the 27.75 hours of attorney time claimed for activities related to the carrier's appeal of the CCH decision on SIBs were reasonable and necessary. Hearing officer 2 determined that the expenditure of 27.75 hours of legal services to generate the claimant's response to the carrier's appeal of the CCH decision on SIBs was not reasonable and necessary and that the expenditure of 10.00 hours of legal services for that purpose was reasonable and necessary. Hearing officer 2 modified the Order accordingly and awarded attorney's fees in the total amount of \$1,962.50. The appellants (attorneys) appealed, contending that the carrier did not sustain its burden to prove that the attorney's fees were not reasonable and necessary and that hearing officer 2 abused her discretion in determining that only 10.00 of the 27.75 hours of fees in question were reasonable and necessary. The attorneys ask that the Appeals Panel reverse hearing officer 2's decision and order and render a decision that the Order is proper and that the attorney's fees for the 27.75 hours in question were reasonable and necessary. The carrier responds that the determinations of hearing officer 2 are supported by the evidence, recites evidence which it contends supports the hearing officer's decision, and urges that the decision be affirmed. The appeal file contains no response from the claimant.

DECISION

We affirm the decision of the hearing officer.

We review attorney's fee cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 91010, decided September 4, 1991. The attorneys challenge the determinations of hearing officer 2 on two bases. First, they contend that, since the carrier put forth no evidence to show that the legal services billed

for were not performed, the hearing officer abused her discretion in finding that the 27.75 hours of fees were not reasonable and necessary. The attorneys confuse the issue. Not only must the work billed for be performed, the fees incurred must be reasonable and necessary. Section 408.147(c). A carrier is thus not liable for fees which are not reasonable and necessary, even if the work is performed. Second, the attorneys urge that the hearing officer did not specify why the 27.75 hours were not reasonable and necessary and she therefore abused her discretion. There was considerable testimony at the CCH concerning what work was done and why so much time was billed for responding to the carrier's appeal. The appeal apparently went well beyond the simple SIBs question itself and raised issues on discovery and exclusion of the claimant's testimony. The carrier's response itself states that its SIBs appeal "involved convoluted legal issues." The Appeals Panel, in Appeal No. 000220, *supra*, a 13-page opinion including a dissent, did not agree with the carrier's argument seeking to exclude the claimant's testimony or with its argument concerning the claimant's documentation of his self-employment.

The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility of the evidence. She weighed the testimony offered and the documents admitted at the evidence and rendered her decision. She gave an example of requesting two hours to review a decision and order as not being reasonable and necessary. As the hearing officer pointed out, the 10.00 hours she approved in connection with the SIBs response are twice the amount set by the guidelines (even though, as she also pointed out, the guidelines do not apply in this case). We do not find that she abused her discretion in determining that 10.00 hours were reasonable and necessary in connection with the claimant's response.

We affirm the decision of hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge