

APPEAL NO. 002330

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 11, 2000. The issue at the hearing was whether any of the fees awarded to the respondent (attorney) for representing the appellant (claimant) in an order dated July 7, 2000 (Order), was excessive. The hearing officer determined that attorney's fees in the amount of \$112.50 were excessive and fees in the amount of \$200.00 were reasonable and necessary. The hearing officer approved fees to be paid from the claimant's benefits, subject to the 25% limit. She further ordered that, if the attorney's firm had received more than the approved amount, they reimburse the claimant for the excess amount within 15 days of receipt of the hearing officer's decision. The claimant filed an appeal contending that no fee should have been approved because the attorney performed no legal services for him. In her response, the attorney urged affirmance. The attorney did not appeal the hearing officer's disapproval of \$112.50 in requested fees and the disapproval of that portion of the requested fee has become final. Section 410.169.

DECISION

We affirm.

We review attorney's fee decisions under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 91010, decided September 4, 1991. One of the items approved by the hearing officer was for a telephone call in which an ambulance bill was discussed. The claimant maintains that the ambulance bill was mentioned only in regard to the unpaid bills the claimant had, making him unable to afford the attorney's fees. The claimant also contends that he verbally fired the attorney, but cannot remember when that took place. The attorney testified that the claimant was not charged for discussions of attorney's fees. The claimant testified to the contrary. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). In her decision, the hearing officer points out the reasonableness of the attorney's monitoring the medical treatment and reports received and calling the doctors' offices, none of which the claimant would probably be aware of at the time, in order to protect the interests of the claimant. Based upon her determination that the attorney performed legal services for the claimant, the hearing officer did not abuse her discretion in approving a fee for those services.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Susan M. Kelley
Appeals Judge