

APPEAL NO. 011165
FILED JULY 05, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Pursuant to our remand in Texas Workers' Compensation Commission Appeal No. 002523, decided December 12, 2000, a contested case hearing was held on April 30, 2001. In a Decision and Order dated May 21, 2001, the hearing officer approved 18 hours of attorney time at a rate of \$150.00 per hour, determining that the hourly rate of \$250.00 requested by the attorney for the claimant was not reasonable. The attorney appealed, asserting error in the denial of an hourly rate of \$250.00 per hour. The appeals file does not contain a response from either the carrier or the claimant.

DECISION

Affirmed.

Review of this case was made somewhat more difficult by the fact that on May 1, 2001, the day after the hearing, the hearing officer issues a Commission Order for Attorney's Fees approving none of the \$2,700.00 requested in that request for attorney's fees. The claimant's attorney appealed from that order challenging both the decision not to approve an hourly rate of \$250.00 per hour, as requested, and the decision not to approve the 18 hours of attorney time as reasonable and necessary. We note that the problem of not approving the 18 hours of time at the rate of \$150.00 was corrected when the hearing officer issued his decision and order following the remand, which approved 18 hours of attorney time at \$150.00 per hour, and ordered the carrier to pay a total fee of \$2,700.00.

The question remains, however, as to whether the hearing officer abused his discretion in not approving the \$250.00 hourly rate. From a review of the decision and order, it is apparent that the hearing officer considered the testimony and documentary evidence submitted by the claimant's attorney in support of his assertion that \$250.00 per hour was a reasonable fee for an attorney with comparable experience in similar cases. In his discussion, the hearing officer noted that some of the attorney's statements at the hearing demonstrated a lack of knowledge of the 1989 Act. That was an appropriate factor for the hearing officer to consider in making the determination of whether the \$250.00 hourly rate was reasonable under the circumstances. Our review of the record reveals that the hearing officer considered appropriate factors in making the determination that a \$250.00 hourly rate was not reasonable in this instance. We cannot agree that the hearing officer acted without reference to guiding rules and principles; therefore, we find no merit in the assertion that the hearing officer abused his discretion in awarding fees based on the \$150.00 hourly rate rather than a \$250.00 hourly rate. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The hearing officer's decision and order awarding \$2,700.00 in attorney's fees, based on 18 hours at \$150.00 per hour, are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge