

APPEAL NO. 012207
FILED NOVEMBER 8, 2001

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 August 15, 2001. The hearing officer resolved the disputed issue by determining that the Texas Workers' Compensation Commission (Commission) order for attorney fees in the amount of \$337.50 was for services which were reasonable, necessary, and performed during the period where there was an attorney-client relationship. The claimant appealed; there is no response from the attorney.

DECISION

We affirm.

All dates are 2001 unless otherwise stated. The claimant asserts that the attorney for whom fees were granted was never his attorney, and that although he knew that the June CCH was to be rescheduled (he had requested postponement) he did not receive the setting notice and was in surgery at that time. When the CCH was held, the claimant was not there. There was no representative from the carrier there. The attorney did not put on testimony concerning the fees but said that the records would speak for themselves.

The date of injury asserted was _____. The claimant was represented for the period from February 14 through March 12; an agreement with the law firm was signed on the day representation was undertaken. Although the name of the law firm was that of a different individual than the claimant's attorney (Law Offices of. . .), the attorney who represented the claimant was with this same law firm. The attorney was apparently hired at the point at which the claim was initially filed and there is no indication whether the claim was disputed. According to the activity log of the attorney, the Commission had approved \$262.50 in attorney fees for services rendered the day of representation, although a copy of such order is not in evidence.

On April 11, the Commission entered an order approving another \$337.50 in attorney fees for services claimed during the period from February 1 through February 28. Essentially, the services for which fees were claimed were telephone calls and drafting two letters, for a total of 2.25 hours at \$150.00 per hour. The claimant discharged his attorney on March 12 in a telephone call to the attorney. On April 24, the claimant requested a CCH to dispute the order. The CCH was set for June 5, but rescheduled on request from the claimant to August 15. Both notices were addressed to the same address of the claimant, also the return address on the envelope that accompanied his appeal.

The claimant is deemed to have received the August set notice in accordance with Tex. W.C. Comm'n 28 TEX. ADMIN. CODE §102.5(d) (Rule 102.5(d)). Attorney fees are considered as necessary and reasonable when they meet guidelines established by Rule 152.4. The previously approved fees would appear to fall within the guidelines for initially

setting up the file, and the fees under dispute here would appear to meet the hourly guidelines for monthly contacts. The pertinent guidelines apply whether the claim is disputed or not; the claimant opted to hire an attorney to set up the claim rather than pursue it initially himself, and cannot avoid responsibility for a fee if the claim was not contested. We therefore affirm the hearing officer's decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge