

APPEAL NO. 012372
FILED NOVEMBER 20, 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 September 10, 2001. The attorney who represented the claimant in this case, requested fees in the amount of \$7,049.42. On August 1, 2001, the fee request was approved and a Texas Workers' Compensation Commission Order for Attorney's Fees (Order), covering services for the period from May 14, 2001, through July 19, 2001, approving 42.75 hours, as requested, at a rate of \$150.00 per hour and 5.25 hours of legal assistant time, for a total approved fee of \$7,049.42, with the fees to be paid pursuant to Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The appellant (carrier) disputes the reasonableness of the attorney's fees in the amount of \$7,049.42. The respondent (attorney) responds urging affirmance.

DECISION

Affirmed.

We review attorney's fee decisions under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 91010, decided September 4, 1991. The carrier disputes the reasonableness of the approved fee. Although it argues that no CCH was necessary because an agreement was entered into, this agreement occurred the day the CCH was scheduled, and the attorney had been hired shortly before that. Whether the carrier will ultimately end up paying for an attorney's "learning curve" is, of course, a matter to be considered in evaluating how productive a dispute will be in a given case and locality. Although the fee may be a little on the high side, it is apparent that the hearing officer determined that the hours submitted by the claimant's attorney, given his late entry into the case, were reasonable and necessary for legal services performed in connection to the claimant's entitlement to supplemental income benefits (SIBs) for the sixth quarter. The hearing officer has explained why she has approved a higher number of hours. By treating SIBs legal fees differently, so that they are not deducted from the claimant's recovery, it is clear that the Legislature intended the financial burden of an unsuccessful dispute to SIBs entitlement to fall upon the carrier, perhaps forcing a more careful analysis of the merits of the defense prior to undertaking a dispute. We cannot agree that the hearing officer abused her discretion in approving a fee for those services.

The hearing officer's decision and order are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge