

APPEAL NO. 012506
FILED DECEMBER 10, 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 was held on September 17, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) is entitled to lifetime income benefits. This decision was affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 012441, decided November 21, 2001. A Commission Order for Attorney's Fees (Order) was issued on October 5, 2001, approving 8.00 hours out of the 17.50 hours requested by the attorney for the claimant for a total approved fee of \$1,237.50 out of the \$2,662.50 requested.¹ The attorney (attorney) appeals, urging that all 17.50 hours in attorney time submitted in the Application for Attorney's Fees (TWCC-152) were reasonable, necessary, and justified in the representation of the claimant. The file contains no response from the claimant or the carrier.

DECISION

Reversed and remanded.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(b) (Rule 152.4(b)) provides that an attorney may request, and the Texas Workers' Compensation Commission (Commission) may approve, a number of hours greater than those allowed by the guidelines if the attorney demonstrates to the satisfaction of the Commission that the higher fee was justified. The attorney states in his appeal that a justification text, describing the complexity of the case, was submitted by a letter to the Commission field office dated September 18, 2000, a copy of which was attached to the appeal. However, the Commission's Attorney Fee Processing System (AFPS) does not show that a note concerning this letter was ever entered into that system.

The Order reflects that the hearing officer gave no explanation for not approving the disputed hours other than the notation "Ex Guideline/Unreasonabl," in the remarks section. The AFPS shows that there was no log text by the hearing officer. The mere comment "exceeded guidelines," without more, is insufficient to deny a particular request where a justification text was submitted by the attorney. Texas Workers' Compensation Commission Appeal No. 970770, decided June 13, 1997. In this case, although a justification text was apparently submitted, the hearing officer entered no text giving further reasons for disallowing the items in question.

In light of the fact that the AFPS does not contain a justification text, and because the hearing officer disallowed the hours in question without giving any further explanation

¹We note that the approved and requested amounts also includes .75 hours of time for a legal assistant. This amount is not in dispute in this appeal.

than the notation "Ex Guideline/Unreasonabl," we reverse the Order and remand the case to the hearing officer to review the attorney's fees in light of the justification text.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Our decision on the merits in Appeal No. 012441, *supra*, indicates that the true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MARCUS C. MERRITT
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IRVING, TEXAS 75063.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge