

APPEAL NO. 021626
FILED AUGUST 6, 2002

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 May 28, 2002. The hearing officer determined that the attorney's fees in Sequence No. 4 in the amount of \$840.00 and in Sequence No. 5 in the amount of \$375.00 should not be approved. In his appeal, the appellant (attorney) asserts error in the determination to deny his requested fees, arguing that the evidence does not support the hearing officer's determination that those fees were not reasonable and necessary. In addition, the attorney maintains that he did not receive notice of the hearing from the Texas Workers' Compensation Commission (Commission) and that he only learned of the hearing from his former client, who was contesting the fees. Thus, he stated that "due to time constraints" and lack of notice from the Commission, he was "unable to attend the hearing." No response was filed to the appeal either from the respondent (claimant) or the respondent (carrier).

DECISION

Affirmed.

In an Order for Attorney's Fees (Order) dated February 20, 2002, the Commission awarded the claimant's attorney's fees in the amount of \$840.00 for the period from January 7 to February 11, 2002. In a second Order dated April 5, 2002, the Commission approved fees in the amount of \$375.00 for the period from February 13 to February 27, 2002. The claimant contested those fees and the matter was set for a hearing. As noted above, the attorney did not attend the hearing. The attorney contends that he did not attend because he was not given notice of the hearing by the Commission. The record belies that assertion. Indeed, the hearing officer admitted in evidence Hearing Officer's Exhibit No. 2, a letter dated May 18, 2002, from the attorney, which states, in relevant part, "[i]n regard to dispute of above attorneys fees (seq. 4 & seq. 5) by the client . . . please be advised that I hereby waive any oral arguments in the said dispute. I would not be present at any future hearings in this matter." In addition, the hearing officer admitted Dispute Resolution Information System contact data entries demonstrating that the Commission contacted the attorney's office on May 16, 2002, and May 22, 2002, to advise him of the hearing.

The hearing officer did not err in determining that the attorney's fees were not reasonable and necessary and should not, therefore, be approved. We have previously noted that where, as here, a claimant is disputing his attorney's fees, there is a split burden of proof. The attorney has a threshold burden of proving up the fees and the services rendered. If the attorney meets that burden, then the claimant has the burden to prove that the challenged fees were not reasonable and necessary. Texas Workers' Compensation Commission Appeal No. 992121, decided November 12, 1999; Texas Workers' Compensation Commission Appeal No. 982969, decided February 2, 1999.

Thus, in this instance, the attorney had the initial burden to prove that his fees were reasonable and necessary and that the services reflected in those fees were actually performed. However, the attorney did not attend the hearing and, despite his assertion to the contrary, the record reflects that he was given notice of the hearing. As such, we cannot agree that the hearing officer erred in determining that the fees should not be approved based upon the attorney's failure to appear at the hearing and his statement that he would not attend future proceedings regarding the dispute over his fees. Under the circumstances, the hearing officer could reasonably interpret the attorney's decision not to attend a hearing where he had a threshold burden of proof as tantamount to a decision to no longer pursue a claim for the contested fees.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeal Panel
Manger/Judge