

APPEAL NO. 021807
FILED SEPTEMBER 4, 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 (CCH) was scheduled for June 27, 2002. On June 12, 2002, the parties entered into an agreement, which resolved the only issue before the hearing officer. In the decision and order dated June 24, 2002, (hearing officer 1) incorporated the agreement of the parties and determined the respondent (claimant) was entitled to supplemental income benefits for the second quarter. No hearing on either the merits or on attorney's fees was held and the minimal record before us does not indicate any evidence on attorney fees having been submitted.

On June 21, 2002, another hearing officer (hearing officer 2) issued a "Texas Workers' Compensation COMMISSION ORDER FOR ATTORNEYS' FEES" (Order) regarding the fees of the attorney for the self-insured, the appellant (attorney), approving 7 hours out of 25.50 hours attorney time requested and .50 hours out of 5.50 hours legal assistant time requested, for a total approved fee of \$1,075.00 out of \$4,100.00 requested. All the disapproved items were disapproved for the reason "Ex guide/Unreasonable," that is, because they exceeded the Commission's attorney's fee guidelines, and are unreasonable. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c) and (d) (Rules 152.4(c) and (d)).

The attorney appeals, asserting that his staff "had inadvertently failed to include a copy of the written justification regarding all billing which might have been outside the guidelines" and submitting additional written justification with his appeal. The file contains no response from either of the respondents.

DECISION

Hearing officer 2's order on attorney's fees is reversed and remanded.

We review a hearing officer's determination of attorney's fee under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 970248, decided March 31, 1997. Rule 152.4(b) provides that an attorney may request and the Commission may approve a greater number of hours than allowed by the guidelines if the attorney demonstrates to the Commission that the higher fee request is justified. In this case, no justification text was submitted with the attorney's fee request.

Because there was no opportunity for the attorney to submit his written justification text to a hearing officer, and in fact there was never a CCH held where the attorney was given an opportunity to submit his written justification text, we reverse the Commission's Order and remand the case for a hearing on attorney's fees or for an opportunity for the attorney to submit written justification regarding his billings.

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 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**AR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge