

APPEAL NO. 022337
FILED OCTOBER 30, 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 August 22, 2002. The hearing officer resolved the issues by determining that; (1) attorney fees awarded in Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (Order) No. 13 that exceeded 7.55 hours at a rate more than \$150 per hour, and more than \$1,132.50 are unreasonable, unnecessary and excessive and that attorney fees of \$1,132.50 are reasonable and necessary; (2) attorney fees awarded in Order No. 14 that exceeded \$150 per hour for 3.00 hours are unreasonable, unnecessary and excessive and that attorney fees of \$450 are reasonable and necessary; and that (3) attorney fees awarded in Order No. 15 that exceeded 7.10 hours at a rate of more than \$150 per hour and more than \$1,065 are unreasonable, unnecessary and excessive and that attorney fees of \$1,065.00 are reasonable and necessary. The appellant (attorney) appeals those determinations and respondent 1 (carrier) responds, urging affirmance. There is no response in our file from respondent 2 (claimant).

DECISION

Affirmed.

The attorney appeals three matters: (1) the determination of the hearing officer to award attorney's fees at the rate of \$150.00 per hour, rather than at the requested hourly rate of \$250.00 per hour; (2) the hearing officer's decision to disallow some of the hours applied for as unnecessary and unreasonable; and (3) the hearing officer's decision to disallow all attorney fees prior to the date the carrier disputed the claimant's entitlement to supplemental income benefits (SIBs).

The standard of review in attorney's fees cases is abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92375, decided September 14, 1992. To obtain a reversal based upon an abuse of discretion, some showing must be made that the determination is arbitrary or without any basis in the record, that is, whether the hearing officer acted without reference to any guiding rules or principles. Morrow v. H.E.B., 714 S.W.2d 297 (Tex. 1986).

The first question is whether the hearing officer abused his discretion in awarding attorney's fees at the rate of \$150.00 per hour rather than at the requested rate of \$250.00 per hour. From a review of the decision and order, it is apparent that the hearing officer considered the testimony and documentary evidence submitted by the claimant's attorney in support of her assertion that \$250.00 per hour was a reasonable fee for an attorney with comparable experience. In his discussion, the hearing officer noted that the questions involved in the underlying SIBs case "were neither novel nor difficult; no more than ordinary skill was required to perform these services; and the fee

customarily charged in this vicinity for the same or similar services is \$150.00 per hour.” Those were appropriate factors for the hearing officer to consider in making the determination of whether the \$250.00 hourly rate was reasonable under the circumstances. We cannot agree that the hearing officer acted without reference to guiding rules and principles; therefore, we find no merit in the assertion that the hearing officer abused his discretion in awarding fees based on the \$150.00 hourly rate rather than on a \$250.00 hourly rate. Morrow.

The next question is whether the hearing officer abused his discretion in disallowing some of the hours requested as unnecessary and unreasonable. The hearing officer disallowed one hour (of two hours) spent waiting at a doctor’s office because the claimant’s attorney went to the office without an appointment, and also disallowed other time that was requested for resolving attorney fee matters. The hearing officer set forth his rationale for denying an hour of the fee requested for the attorney’s time spent waiting at the doctor’s office, and we cannot say that the hearing officer acted in an arbitrary manner or without basis in the record. Further, as noted in Texas Workers’ Compensation Commission Appeal No. 962471, decided January 17, 1997, a claimant’s attorney is not entitled to fees in conjunction with actions to procure attorney’s fees. In such cases, the attorney, not the claimant, is the client. Consequently, the hearing officer did not abuse his discretion. Morrow, supra.

Finally, the claimant’s attorney contends that the hearing officer erred in his determination that attorney’s fees may only be awarded for services performed after the carrier disputes the SIBs quarter in question. The claimant’s attorney argued that all reasonable and necessary attorney’s fees incurred should be paid by the carrier, whether the fees are incurred prior to or after the carrier’s dispute. The Appeals Panel has previously held that “the clear language of Section 408.147(c) . . . designate[s] the carrier’s dispute as the action at which point the carrier then becomes liable for any resulting (and necessarily subsequent) attorney’s services and fees.” Texas Workers’ Compensation Commission Appeal No. 011478-S, decided August 13, 2001. The hearing officer’s decision to disallow attorney fees requested for services performed prior to the date the carrier disputed the claim for SIBs was not an abuse of discretion. Morrow.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge