

APPEAL NO. 022606
FILED NOVEMBER 26, 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 held on July 15, 2002. The hearing officer determined that respondent 2 (claimant) sustained a repetitive trauma injury.

The CCH in question lasted one and one-half hours. Of 34.50 hours claimed by the appellant (carrier's attorney) for attorney's fees, the hearing officer approved 11.50 hours. This is an appeal from that award by the carrier's attorney. The carrier's attorney points out, among other arguments, that fewer hours have been allowed for communications than provided for in the guidelines of the Texas Workers' Compensation Commission. There was no response to the appeal.

DECISION

Affirmed in part, reversed and rendered in part.

This was a repetitive trauma case, with related issues on disability and timely notice to the employer. The appellant was the attorney for the carrier at the CCH, and he complains of an award of \$1437.50 attorney's fees out of a total of \$4312.50 claimed.

The carrier's attorney has not asserted in his appeal/justification that there was anything extraordinary about the facts of this particular case. While he asserts at one point that "voluminous" medical records were reviewed, the records produced in the record of the CCH were relatively few. There appear to be no services claimed in his request for fees that would be considered as "direct dispute negotiation with the other party" as allowed for under the guidelines in Tex W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c) (Rule 152.4(c)).

Further, the carrier's attorney argues that he prepared interrogatories "at the carrier's insistence" on May 24, 2002, for serving on the claimant. The time claimed and totally disallowed amounts to 1.5 hours. The interrogatories are not in evidence, nor is there further explanation of why the interrogatories would be required over and above the information furnished in medical records or by the investigation of the claim. We note that Rule 142.19 provides for standard interrogatories, which forms allow for few originally-drafted questions. With no further justification provided for propounding interrogatories in the time claimed, other than the subjective desire of the party, or a showing that more was involved than simple forwarding of standard form interrogatories, we cannot agree that the hearing officer abused his discretion by disallowing this claimed time.

Rule 152.4 provides that guidelines for participation in a CCH consist of actual time plus four hours. In the section allowed for formal resolution, the hearing officer's maximum guideline would have been 5.50 hours, and he has allowed 7.00. The appeal does not address why the claimed 10.00 hours of time with the adjuster, in addition to the 2.50 approved, was necessary in what would appear to be a straightforward repetitive trauma case. Nor has the necessity of preparing and drafting pleadings for the hearing officer for a total of 7.50 hours, (all such hours being disallowed by the hearing officer), been established.

"Communications" are allowed at 2.5 hours per month. The form of communications are not defined and can be used to include correspondence as well as telephone calls. The carrier's attorney claimed a total of 6.00 hours and was reduced to 3.00, with the sole explanation given was that the time/cost was unreasonable. However, as the claimed amounts were within guidelines for a time span of three months, we agree that the hearing officer abused his discretion on communications and thereby we reverse and render to approve the additional three hours claimed, for an additional amount of \$375.00 in approved fees over and above the \$1437.50 already approved by the hearing officer.

We therefore affirm in part and reverse and render in part the award of attorney's fees to the carrier's attorney.

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

**CT CORPORATION
350 N. ST. PAUL
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge