

APPEAL NO. 022907
FILED DECEMBER 5, 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 (hearing) was held on September 3, 2002. The hearing officer signed a Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (Order) on October 17, 2002, approving .90 hours of the 2.60 hours requested attorney's fees for the appellant (attorney) and .40 hours of the 1.00 hour requested for legal assistant time. The order also denied \$53.59 in requested expenses. The attorney appeals and requests that the firm be awarded the additional 1.70 hours of attorney's fees. The attorney does not complain about the denial of the .60 hours of legal assistant time or the \$53.59 of expenses. In his response to the attorney's appeal, the attorney for the claimant states that "time incurred by the carrier was both reasonable and necessary to the furtherance of its case" and concludes that the attorney's fees requested by the carrier should be approved. In addition, the attorney attached an affidavit from the adjuster handling the case to his appeal, which provides that the attorney's fees "were reasonable and necessary to an effective defense of this claim and performed at my request."

DECISION

Reversed and rendered.

We review attorney's fee cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. As noted above, in this instance, both the adjuster handling the claim for the carrier and the claimant's attorney noted that the fees were reasonable and necessary to the pursuit of an effective defense. Indeed, in his response, the claimant's attorney noted that both he and the carrier's attorney had "aggressively pursued the case in discovery." In addition, the claimant's attorney stated that he "had first hand knowledge of the work performed by the carrier to prepare this case for the [hearing] and is of the opinion that the time spent was reasonable and necessary to properly establish its evidence." Likewise, the handling adjuster agreed that the fees were properly incurred in the vigorous defense of the case. With the evidence in this posture, we believe that the hearing officer erred in denying the requested attorney's fees. Accordingly, we approve an additional 1.50 hours at \$145.00 per hour (\$217.50) and .20 hours at \$125.00 per hour (\$25.00) for a total of \$242.50. As noted above, the carrier did not challenge the denial of the .60 hours of legal assistant time or \$53.59 in expenses; thus, we will not address those items on appeal.

The Commission's order denying 1.50 hours of attorney time at \$145.00 per hour and .20 hours of attorney time at \$125.00 per hour is reversed and a new decision is rendered that those hours were reasonable, necessary, and performed. The carrier is awarded additional fees in the amount of \$242.50.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PRENTICE-HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge