

APPEAL NO. 022952  
FILED JANUARY 9, 2003

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 September 5, 2002. The issue at the CCH was respondent 1's (claimant) impairment rating (IR). Following the CCH, the appellant, the attorney who represented respondent 2 (self-insured), requested approval of \$4,550.89 for attorney's fees and expenses. In a Texas Workers' Compensation Commission (Commission) Order For Attorney's Fees dated November 5, 2002 (the order), the hearing officer approved \$2,962.60 of the amount requested. The attorney appealed the order. No response was received from the claimant or the self-insured.

DECISION

Reversed and rendered.

Section 408.222 pertains to attorney's fees paid to defense counsel. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4 (Rule 152.4) sets forth the guidelines for legal services provided to claimants and carriers, and Rule 152.5 sets forth allowable expenses. We review a hearing officer's determination of attorney's fees under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 022605, decided November 27, 2002. Rule 152.4(b) provides that an attorney may request, and the Commission may approve a number of hours greater than those allowed by the guidelines, if the attorney demonstrates to the satisfaction of the Commission that the higher fee was justified under Sections 408.221 and 408.222 and applicable Commission rules.

The request for attorney's fees covered the period of July 3 through September 30, 2002, and included attending the benefit review conference (BRC), communications with the client and others, preparing for the CCH, and attending the CCH. The hours and expenses that the hearing officer did not approve are addressed below.

Initial Services. The guidelines allow 1.5 hours for the initial interview and research and setting up the file and completing and filing forms. The attorney requested 1.8 hours for these initial services. The hearing officer approved no hours for the initial services. We conclude that the hearing officer abused her discretion in allowing no time for the initial services and we approve 1.5 hours for these services.

Formal Resolution: CCH. For participation in the CCH, the guidelines allow the actual time in the CCH plus 4 hours. The attorney requested 10.5 hours for preparing for and attending the CCH. The hearing officer approved 5.15 hours for these services. The attorney provided the hearing officer with a justification text for the additional hours of preparation. According to the Attorney Fee Processing System Review Log Text, the hearing officer did not approve the hours that exceeded the guidelines based on her

determination that the IR issue was not sufficiently complex to warrant exceeding the guidelines. The IR issue involved the application of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Our decision in Texas Workers' Compensation Commission Appeal No. 022509-s, decided November 21, 2002, which remanded the case to the hearing officer, demonstrated the complexity of the case in so far as determining whether the designated doctor had complied with the fourth edition of the AMA Guides. We conclude that the hearing officer abused her discretion in not approving the additional hours of preparation time for the CCH and we approve an additional 5.35 hours of preparation time for the CCH.

**Travel Time.** The hearing officer approved some, but not all of the attorney's travel time to attend the BRC and CCH. We conclude that it was an abuse of discretion to not approve the requested travel time. We approve an additional 2.40 hours for travel time. See Texas Workers' Compensation Commission Appeal No. 000933, decided June 1, 2000, and Rule 152.4(c)(8).

**Travel Expense.** The attorney requested \$148.34 in travel expenses for attending the BRC and CCH. The hearing officer approved \$125.10 in travel expenses, noting that the amount not approved exceeded the guidelines. Our review indicates that the requested travel expenses did not exceed the guidelines. See Rule 152.5(b)(1). We approve an additional \$23.24 in travel expenses.

**Cost of Records.** Rule 152.5(a) provides that as part of the application for attorney fees, an attorney shall submit an itemized list of expenses incurred for the preparation and presentation of the client's case, and that the date, nature, and amount of the expense shall be clearly identified. Our review indicates that the attorney did not submit with the application for attorney fees an itemized list of expenses with regard to the \$327.55 requested for the cost of records. Consequently, we do not find that the hearing officer abused her discretion in not approving the amount requested for the cost of records.

**Formal Resolution: BRC.** The attorney requested 1.10 hours for attending the BRC and the hearing officer approved .75 hours for that service. The attorney states that the .35 hours that were not approved was for "wait time." The attorney has not sufficiently apprised us of the circumstances of the .35 hours for us to conclude that the hearing officer abused her discretion. See Texas Workers' Compensation Commission Appeal No 971862, decided October 27, 1997, and Texas Workers' Compensation Commission Appeal No. 962525, decided January 21, 1997.

In summary, we approve an additional 9.25 hours for the attorney's services at the requested rate of \$125.00 an hour resulting in an additional \$1,156.25 in approved time and we approve an additional \$23.24 in expenses. This results in an increase of \$1,179.49 in the total fee approved by the hearing officer. Accordingly, we reverse the

hearing officer's order approving a total fee of \$2,962.60 and we render a decision approving the payment of a total fee in the amount of \$4,142.09.

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

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Roy L. Warren  
Appeals Judge