

APPEAL NO. 023252
FILED FEBRUARY 13, 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 was held on December 12, 2002. The hearing officer determined that, with the exception of two Texas Workers' Compensation Commission Orders for Attorney Fees (orders), none of the orders disputed by the appellant (claimant) were disputed in a timely manner. With regard to the two orders that were determined to have been timely disputed, the hearing officer found that the attorney's fees challenged were not excessive. The hearing officer concluded that total attorney's fees in the amount of \$2,637.50 were reasonable and necessary. The claimant appeals this decision. The appeal file does not contain a response from either respondent 1 (attorney) or respondent 2 (carrier).

DECISION

Affirmed as reformed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that was not submitted into the record at the hearing. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents attached to the claimant's request for review, which were not admitted into evidence at the hearing.

The hearing officer did not err in finding that the attorney fee orders dated April 2, April 4, May 21, May 22, May 29, June 6 (sic), June 17, and July 10, 2002, were not timely contested by the claimant in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3(d) (Rule 152.3(d)). We note that in Finding of Fact No. 7, the hearing officer lists an order issued on June 6, 2002, as not being timely contested. As the record and the remaining portions of the hearing officer's decision reflect that the date of the order in question is June 5, 2002, we hereby reform Finding of Fact No. 7 to reflect the same.

Further, the hearing officer did not err in determining that the fees approved in the above-referenced orders and those approved in orders issued on April 29 and May 7, 2002, were reasonable and necessary. We review attorney's fees cases under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. In determining whether there has been an abuse of

discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996, citing Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). Section 408.222 and Rules 152.1 and 152.3 through 152.5 govern fees paid to a carrier's attorney. In view of the record and the applicable law, we cannot conclude that the hearing officer abused her discretion in determining that attorney fees in the amount of \$2,637.50 are reasonable and necessary.

The hearing officer's decision and order is affirmed as reformed.

Chris Cowan
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Roy L. Warren
Appeals Judge