

APPEAL NO. 032647
FILED NOVEMBER 18, 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 August 21, 2003. A second hearing was held on September 9, 2003, in order to correct a mistake in placement of the burden of proof. The hearing officer determined that the award of attorney's fees for \$637.50 for 4.25 hours of attorney's time for legal services rendered by respondent 1 (attorney) from January 3 through April 8, 2003, was not excessive, and that the legal services were reasonable, necessary, and performed. The appellant (claimant) appeals, asserting that the attorney failed to prove that the services billed for were in fact performed. There is no response in the appeal file from the attorney or from respondent 2 (carrier).

DECISION

Affirmed.

The attorney's fees were awarded pursuant to Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (order) No. 03241220-8. The hearing officer did not err in determining that the attorney's fees were reasonable, necessary and for services performed. We have previously noted that where, as here, a claimant is disputing his attorney's fees, there is a split burden of proof. The attorney has a threshold burden of proving up the fees and the services rendered. If the attorney meets that burden, then the claimant has the burden to prove that the challenged fees were not reasonable and necessary. Texas Workers' Compensation Commission Appeal No. 992121, decided November 12, 1999; Texas Workers' Compensation Commission Appeal No. 982969, decided February 2, 1999. Thus, in this instance, the attorney had the initial burden to prove that his fees were reasonable and necessary and that the services reflected in those fees were actually performed. The associate who appeared at the first hearing was called as a witness by the ombudsman, and testified to the effect that the law firm's activity logs reflected that each of the events listed in the order occurred. In addition, the claimant testified, and agreed that an attorney from the retained law firm appeared at a January 2003 benefit review conference (BRC); however, the claimant testified that he had never met that attorney before and did not believe he was properly prepared to participate in the BRC. While the claimant's testimony intimated that he did not believe that each of the claimed services were provided, this just presented conflicting evidence for the hearing officer to resolve.

The standard employed by the Appeals Panel in the review of an attorney's fees order by the Commission is the abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 961387, decided August 26, 1996; Texas Workers' Compensation Commission Appeal No. 93640, decided September 10, 1993. We have reviewed the tape recordings of the two hearings held on this matter, the

various exhibits accepted into evidence, and the decision of the hearing officer, together with the appeal filed by the claimant, and do not find any abuse of discretion in the award of attorney's fees by the hearing officer.

We affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge