

APPEAL NO. 032841
FILED DECEMBER 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case involves a dispute of attorney's fees by the appellant (claimant herein) that had been awarded to respondent 1 (attorney herein), who had previously represented the claimant, by a Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees dated September 18, 2003.

DECISION

Reversed and remanded.

There is very little information in the appeal file before us. Based upon the information before us, we can discern that the claimant had been represented by the attorney in a claim for benefits under the 1989 Act. There is a tape recording of a contested case hearing (CCH) that was conducted before hearing officer (name of hearing officer) on September 10, 2003. The claimant was not present at the CCH. The attorney and the attorney for respondent 2 (carrier herein) were present. The hearing officer noted that a CCH had been previously scheduled for June 23, 2003, and that the claimant had not appeared due to her misunderstanding of the date of that setting. The hearing officer noted that both attorneys had appeared on June 23, 2003, and that the case had been continued to September 10, 2003. The hearing officer determined that in light of the fact that the claimant was not present on September 10, 2003, a "ten-day letter" should be sent to the claimant.

The hearing officer stated that he would permit each of the attorneys to make a record concerning attorney fees if he needed to make a decision in the case in the event the claimant did not respond to the "ten-day letter." The attorney stated that she would provide a written request for attorney's fees. The attorney stated that she had come prepared to proceed with the CCH, that she practiced workers' compensation law, that she was aware of the usual attorney charges in workers' compensation matters, that her fees were reasonable and necessary, and that the work represented by the fees had been performed.

There are computer-generated records from the Commission in the appeal file that indicate the "ten-day letter" was sent to the claimant on September 10, 2003, and that the claimant responded to the letter. A notation dated September 19, 2003, indicates that the claimant stated that the attorney had released the claimant and that the claimant requested the CCH be reset and she have the assistance of an ombudsman. There is no indication in the appeal file of as to what, if anything, has taken place on the merits of the claimant's case after that point.

However, it is clear that the Commission Order for Attorney's Fees was issued on September 18, 2003, in which the hearing officer awarded the attorney \$502.50 in attorney fees. The claimant responded by sending a letter to the Commission's (city) field office in which she stated, "Would like disagree with these fees I don't under why so much." The Forth Worth field office received this letter on October 10, 2003, then forwarded this letter to the Appeals Panel.

It appears to us that the claimant's request to the field office is more in the nature of a request for a hearing on attorney's fees than a request for review by the Appeals Panel. We understand that attorney's fees ordered by a hearing officer after a hearing on attorneys' fees are a matter for Appeals Panel review. However, the claimant was not present at the September 10, 2003, CCH to present her position. The very reason she was sent the "ten-day letter" was to insure she was not deprived of due process. The hearing officer recognized this both when he decided to send the "ten-day letter" and when he stated on the record that he was providing the attorneys with an opportunity to make a record on attorney's fees in the event the claimant did not respond to the "ten-day letter." However, the claimant did respond to the "ten-day letter" within ten days by responding on the ninth day. By then, the hearing officer had issued the order on attorney's fees on the eighth day after the "ten-day letter" was sent.

This leaves us in a situation in which the claimant has not had an opportunity to respond to the attorney's request for fees. Nor has the attorney, as far as we can discern, been given an opportunity to respond to the claimant's dispute of those fees. We really have no basis to review a dispute because we have extremely limited information before us. We, therefore, reverse the Commission Order for Attorney's Fees dated September 18, 2003, and remand this case to the hearing officer to set a CCH on the issue of attorneys' fees and notify all the parties of the CCH, so that all parties will be insured due process prior to the entry of an order on attorney's fees.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge