

APPEAL NO. 091128
FILED SEPTEMBER 16, 2009

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 telephonically on June 8, 2009. Texas Department of Insurance, Division of Workers' Compensation (Division) issued an Order for Attorney's Fees on February 12, 2009, for dates of service from September 15, 2008, through January 26, 2009, approving 5.50 of the 5.50 hours requested for the attorney's services at a rate of \$150.00 per hour and approving 1.10 of the 1.10 hours requested for services of the legal assistant at a rate of \$50.00, for a total amount of \$825.00.

The appellant (claimant) appealed the hearing officer's determination contending that it did not reflect the agreement of the parties. The appeal file does not contain a response from either respondent 1 (claimant's attorney) or respondent 2 (carrier).¹

DECISION

Reversed and rendered.

The record reflects that the parties agreed that the claimant's attorney filed a request for .35 hours at the rate of \$150.00 per hour for services performed on September 15, 2008, that was not part of the Attorney's Fee Order dated February 12, 2009. The parties agreed on the record that the .35 hours requested for legal services performed on September 15, 2008 (for a total of \$52.50) and 1.05 hours for legal services performed on dates of service from December 29, 2008, through January 26, 2009 (for a total of \$157.50) would not be included in the attorney's fees ordered to be paid to the claimant's attorney for legal services performed from December 29, 2008, through January 26, 2009 (for a complete total of \$210.00). The record reflects that the parties agreed that the reasonable and necessary amount of attorney's fees for the claimant's attorney for legal services performed from September 15, 2008, through January 26, 2009, is \$615.00.

The hearing officer's decision and order does not reflect the agreement made by the parties on the record during the CCH held on June 8, 2009. 28 TEX. ADMIN. CODE § 147.4(c) (Rule 147.4(c)) provides that an oral agreement reached during a CCH and preserved in the record is effective and binding on the date made. The claimant does not contend in his appeal that the agreement should be set aside but rather argues that the hearing officer's decision and order does not reflect the agreement made by the parties. We agree. A review of the record reflects that the parties agreed that attorney's fees in the amount of \$615.00 to the claimant's attorney

¹ Upon receipt of the notice of the CCH concerning the claimant's dispute over attorney's fees, the carrier contacted the Division by letter, stating it did not take any position on the disputed issue and would not be presenting any evidence on the issue and therefore its presence was not necessary to the litigation of the issue.

for legal services performed from September 15, 2008, through January 26, 2009, are reasonable and necessary. We reverse the hearing officer's decision that the attorney's fees in the amount of \$825.00 to the claimant's attorney for legal services performed from September 15, 2008, through January 26, 2009, are reasonable and necessary and that the carrier is ordered to pay to the claimant's attorney, fees and costs in the total amount of \$825.00 and render a new decision that attorney's fees in the amount of \$615.00 to the claimant's attorney for legal services performed from September 15, 2008, through January 26, 2009, are reasonable and necessary. If the claimant's attorney has been paid the attorney fees awarded, above the amount of \$615.00 by the Attorney's Fee Order dated February 12, 2009, or the claim for .35 hours of legal services provided on behalf of the claimant on September 15, 2008, the claimant's attorney is ordered to reimburse the claimant. See Rule 152.3(g)(h).

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
D/B/A CSC – LAWYERS INCORPORATING SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge