

APPEAL NO. 950155

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 17, 1995, Appeals Panel No. 23 issued Order No. 94059 which declined to review a denial, in part, of appellant's application for attorney's fees for representation of a carrier in connection with dispute resolution under the 1989 Act because "[t]here is no evidence that a hearing officer ordered the approval of the fees after a benefit contested case hearing." The Texas Workers' Compensation Commission Order for Attorney's Fees considered by the Appeals Panel at that time was dated November 17, 1994. When it issued Order No. 94059, the Appeals Panel was not aware that on January 4, 1995, the hearing officer, Allen D. Rountree, on the basis of Tex. W.C. Comm'n, TEX. ADMIN. CODE § 152.3 (Rule 152.3), denied a request from the appellant, dated December 2, 1994, for a contested case hearing regarding attorney's fees that were reduced by the hearing officer "after a contested case hearing." The hearing referred to was the contested case hearing in (RH), Claimant v. American Home Assurance Company, Carrier, (Docket No, redacted), held on November 15, 1994. The appellant now seeks to appeal this January 4, 1995, refusal of the hearing officer to conduct another contested case hearing on attorney's fees.

DECISION

We affirm.

Rule 152.3 provides, in pertinent part:

Rule 152.3: Approval or Denial of Fee by the Commission

(d) Except as provided in subsection (e) of this section, an attorney . . . who contests the fee fixed and approved by the commission shall request a benefit contested case hearing . . .

(e) An attorney . . . who contests the fee ordered by a hearing officer after a benefit contested case hearing shall request review by the appeals panel. . .

Our review of the record in the (H) contested case hearing discloses that the appellant was given the opportunity, and did, in fact, present evidence and argument in support of her fee application. This was the "appropriate time" to do so, Texas Workers' Compensation Commission Appeal No. 93790, decided October 19, 1993, and constituted a hearing on this issue. For this reason, we affirm that part of the decision of the hearing officer which, pursuant to Rule 152.3(e), denied appellant's request for a second hearing, and address the substantive issue of whether the hearing officer abused his discretion in not awarding the full amount of attorney's fees requested. Texas Workers' Compensation Commission Appeal No. 91010, decided September 4, 1991.

The hearing officer disapproved 6.3 hours of paralegal time and 1 hour of the appellant's time in connection with the conduct of the contested case hearing, out of a total of 28.10 hours requested for this phase of the dispute resolution process. According to the appellant, the disapproved hours were for the drafting of subpoena requests by the paralegal and one hour of attorney's time to prepare for the hearing. The Guidelines for Legal Services Provided to Claimants and Carriers (Guidelines) in Rule 152.4 provide a maximum of actual time spent at the contested case hearing plus 4.0 hours. More hours can be approved if justified by the attorney. In this case, the contested case hearing lasted 1.5 hours. Thus, both the total hours requested (28.10) and the hours approved (20.80) for the contested case hearing substantially exceed the Guidelines maximum. Given this fact, we are unwilling to conclude that the hearing officer abused his discretion in not approving more hours than he did.

For the category of client communications, the Guidelines maximum is 2.5 hours per month. The period of this application includes at most four months¹ for a total of 10 hours. The appellant requested 14.40 hours and 10.95 were approved. The attorney offered no justification for the hours in this category that were not approved other than to say that communications with and on behalf of the client were actually made as reported. We do not conclude that the hearing officer abused his discretion in not approving these additional hours requested.

¹This includes giving full credit for August 1994 even though the period of the fee application begins on August 17th.

For the above reasons, the action of the hearing officer on appellant's request for approval of fees is affirmed.

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge