

APPEAL NO. 950270

This appeal arises under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Appellant, the attorney for the carrier, filed an application for his attorney's fees with the Texas Workers' Compensation Commission (Commission) pursuant to Section 408.222 for representing a carrier under the 1989 Act. The fee application received by the Commission was for work from November 15, 1994, through December 30, 1994. On February 7, 1995, an unsigned "COMMISSION ORDER FOR ATTORNEY'S FEES" approved \$907.78 of the \$3,037.78 requested. The attorney argues in his appeal dated February 23, 1995, that all of his fees were reasonable and necessary and justified.

DECISION

Reversed and Remanded

The CCH, at which appellant represented the carrier, was held on December 30, 1994, and a 10 page application for attorney's fees is dated January 26, 1995. The Commission Order for Attorney's Fees is dated February 7, 1995. It contains a typed entry that says "Ordered By: (hearing officer) - BUZEVV1." There is, however, no evidence that a CCH was held as to attorney's fees, and the CCH record in which appellant represented the carrier contains no consideration of any question arising about attorney fees. The hearing officer asked at the end of that record: "Do either of you want to add anything about attorney's fees?" To which appellant replied, "Not at this time" and claimant's attorney then replied to that question, "No."

The unsigned Commission Order for Attorney's Fees appears to have been accomplished based upon the attorney's written submission without a CCH on attorney's fees since the appeals file contains no audio tapes or transcript of such a record. Regardless of who ordered the "Commission Order," whether an abuse of discretion occurred is not readily discernible in 48 entries, labeled as "exceeded guidelines" or "multiple reasons," all but one of which allow no payment to appellant. However, with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4 (Rule 152.4) providing that hours may be approved in excess of the guidelines, a question, if not a presumption, of arbitrariness arises when 42 of 43 entries simply marked "exceeded guidelines" resulted in no time allowed, with no further explanation.

The legislature has by statute required the Commission to approve an attorney's fee in workers' compensation matters. Sections 408.221 and 408.222. Commission rules implement these provisions. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1 (Rule 152.1) *et seq.* In addition, Texas Workers' Compensation Commission Appeal No. 91010, decided September 4, 1991, applied the maximum fee guidelines to counsel fees of carrier's attorney. A hearing following immediately after the CCH would be appropriate for an attorney to present any disputed matters out of the ordinary and to ensure that significant

matters are brought to the attention of the Commission in a detailed manner. However, written submissions are also permissible.

Rule 152.3(d) requires any party who wants to contest fees fixed and approved by the Commission to request a "benefit contested case hearing." The only exception to Rule 152.3(d) is Rule 152.3(e) which requires:

(e)An attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a benefit contested case hearing shall request review by the Appeals Panel pursuant to the provisions of § 143.3 of this title (relating to Requesting the Appeals Panel to Review the Decision of the Hearing Officer).

The evidence indicates that a hearing officer may have ordered the approval of fees after a benefit contested case hearing although no separate hearing on attorney's fees was requested by either party. The Commission should hold a hearing on the fee application since there is no evidence or basis upon which to determine if there was any abuse of discretion in approving only approximately 30% of the fee. A contested case hearing on attorney's fees would allow for all affected parties to submit evidence.

Under the circumstances, with no record of any hearing on attorney's fees to review, or other rationale by the hearing officer for the drastic disapproval of requested fees, the case is remanded for the hearing officer to explain: why the legend, "exceeded guidelines," totally denied any time in all but one entry and what the legend, "multiple reasons," included as to entries denied on that basis.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge