

APPEAL NO. 050311
FILED APRIL 7, 2005

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 on January 4, 2005 (hearing officer 1) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that because the compensable injury of _____, aggravated the preexisting degenerative disc disease of the lumbar spine, the compensable injury of _____, extends to and includes degenerative disc disease of the lumbar spine and that respondent 2 (self-insured) did not waive the right to contest that the compensable injury includes degenerative disc disease of the lumbar spine by not timely contesting the extent of injury in accordance with Section 409.021. On January 19, 2005, a second hearing officer, (hearing officer 2), signed a Texas Workers' Compensation Commission Order for Attorney's Fees on January 19, 2005, approving 2.75 of the 6.75 hours requested for attorney's fees and approving the 2.00 hours requested for legal assistant's time. The appellant (attorney) appeals and requests that she be awarded an additional \$600.00 for the 4 excluded hours in attorney fees. The appeal file does not contain a response from either respondent 1 (claimant) or the self-insured.

DECISION

Reversed and rendered.

We review attorney's fees cases under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The attorney requested a total of 6.75 hours, 1.75 of which was approved for travel time. Under the heading "Formal Resolution: Benefit Review Conference" (although it is clear from the dates requested the request for time was for "Formal Resolution: [CCH]"), 4.0 of the 5.0 hours requested were for preparation and the remaining 1.0 hour for attendance at the hearing. The Attorney Fee Processing System (AFPS) printout reflects that the hearing officer granted 1.0 hour, but denied the remaining 4.0 hours for the following reason "ExGuideline/Unreasonabl." The AFPS does not reflect any further explanation by the hearing officer for the denial. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c) (Rule 152.4(c)) provides that for participation at the hearing, the actual time in the hearing plus 4.0 hours are allowed. The hearing officer, therefore, abused his discretion in excluding the 4.0 requested hours on the basis that they exceeded the guidelines as they are, in fact, allowed by the guidelines.

Hearing officer 2's order on Attorney's Fees is reversed and a new decision is rendered approving the 4.00 hours excluded for a total of approved hours of 6.75 for attorney's time and 2.00 for legal assistant's time, a total of \$1,112.50.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge