

APPEAL NO. 221564  
FILED NOVEMBER 30, 2022

This appeal arises pursuant to Texas Workers' Compensation Act, Tex. Lab. Code Ann. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 29, 2022, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ determined that for Sequence No. 3, an attorney's fee in the amount of \$487.50 is reasonable and necessary for services rendered from May 3, 2022, through May 12, 2022. Additionally, the ALJ determined that for Sequence No. 3 an attorney's fee in the amount of \$100.00 is not reasonable and necessary for services rendered from May 3, 2022, through May 12, 2022.

The appellant (claimant) appealed the ALJ's attorney fee determination contending that she did not receive any benefit from the attorney's services. The appeal file does not contain a response from respondent 1 (attorney) or respondent 2 (carrier).

DECISION

Affirmed in part and reversed and rendered in part.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.—Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

The Texas Department of Insurance, Division of Workers' Compensation (Division) Order for Attorney's Fees, Sequence No. 3, dated June 16, 2022, approved 2.50 hours of attorney's fees at \$200.00 an hour and 1.50 hours of legal assistant's fees at \$65.00 an hour for a total attorney fee request of \$597.50. We note that the fees requested were for services performed from May 3, 2022, through May 12, 2022. The standard for review in an attorney's fee case is abuse of discretion. Appeals Panel Decision 061189, decided July 24, 2006.

The ALJ found that 2.00 hours of attorney time and 1.50 hours of legal assistant time were reasonable and necessary for the claimant's case. He additionally found that .50 hours of attorney time for receiving and reviewing documents on May 5, 2022, was not reasonable or necessary. Those findings are supported by sufficient evidence and

are affirmed. Additionally, the ALJ determined that for Sequence No. 3 an attorney's fee in the amount of \$100.00 is not reasonable and necessary for services rendered from May 3, 2022, through May 12, 2022. That determination is supported by sufficient evidence and is affirmed.

However, the ALJ then mistakenly concluded that 2.00 hours of attorney time at \$200.00 an hour and 1.50 hours of legal assistant's fees at \$65.00 an hour resulted in a total attorney fee of \$487.50 instead of \$497.50. Therefore, we reverse the ALJ's determination that for Sequence No. 3, an attorney's fee in the amount of \$487.50 is reasonable and necessary for services rendered from May 3, 2022, through May 12, 2022, and we render a new decision that for Sequence No. 3, an attorney's fee in the amount of \$497.50 is reasonable and necessary for services rendered from May 3, 2022, through May 12, 2022.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO  
2200 ALDRICH STREET  
AUSTIN, TEXAS 78723.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge