

APPEAL NO. 051976
FILED OCTOBER 5, 2005

This appeal arises pursuant to Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 29, 2005. The issues were whether the Texas Department of Insurance, Division of Workers' Compensation (Division) Order for Attorney's Fees, Sequence No. 1 dated May 24, 2005, was reasonable and necessary and whether the attorney's fees order was timely disputed. The hearing officer determined that the appellant (attorney) is not entitled to attorney's fees for Sequence No. 1 because there "is not a valid Contract of Employment between the parties in evidence" and that the respondent 1 (claimant) "timely disputed the [Attorney's Fee] Order." The hearing officer's determination that the claimant timely disputed the Attorney's Fees Order has not been appealed and has become final pursuant to Section 410.169.

The attorney appealed, contending that the hearing officer erred in finding no valid contract of employment, that the hearing officer cannot legally void a stipulation and that his attorney fees were reasonable, necessary and performed. The file does not contain a response from either the claimant or the respondent 2 (carrier).

DECISION

Reversed and a new decision rendered.

The parties stipulated that the claimant sustained "a work injury" on _____. Sometime in April 2005 the claimant retained the services of the attorney (because of a bad experience with an insurance company on a prior claim). The parties stipulated that "at some time" the claimant "signed a contract of employment with the law offices of [the attorney]." The hearing officer explained to the claimant what a stipulation was and the claimant agreed that she signed a contract for the attorney to be her lawyer. The attorney submitted a request for award of attorney fees for services performed between April 19 and April 26, 2005, for services including drafting letters, telephone conferences, reviewing documents, doing legal research and file set up. The attorney claimed 4.75 hours attorney time at \$150.00 an hour and .50 hours legal assistant time at \$50.00 an hour for a total of \$737.50. The Division approved the request by "Commission Order For Attorney's Fees" dated May 24, 2005. The claimant challenged the fees contending all the items billed had not been performed. The claimant stated that she "had no problem paying for the services of an attorney" but that the attorney had not properly kept her apprised of the status of her case. The claimant subsequently discharged the attorney on June 14, 2005.

At the CCH the attorney testified regarding the work he had done. The hearing officer in the Background Information section explained why he discounted some of the claimed fees but did comment that the claimant had mailed the attorney "a large package" of material. The hearing officer concluded that the attorney:

...did some work as evidenced by the exhibits so it is credible he received and reviewed documents on April 19, 2005, performed Legal Research and Reviewed the File, as itemized under Informal Resolution. Therefore 1.5 hours would be found reasonable and performed.

The hearing officer then focuses on one document entitled "Client Engagement of Attorney" which has marked out portions, is undated and signed only by the claimant, to conclude that there was no valid contract of employment between the parties in evidence. In evidence was a Notice of Representation or Withdrawal of Representation (TWCC-150) form which was properly signed and dated by both parties (the form was signed and dated by the attorney on April 18, 2005). The hearing officer dismisses the TWCC-150 form as not being a contract of employment between a claimant and an attorney and determines that the attorney is not entitled to any attorney fees.

The hearing officer erred for the following reasons. The issue before the hearing officer was whether the attorney fees ordered in the Division Order for Attorney's Fees, Sequence No. 1 was reasonable and necessary. The issue was not whether there was a valid contract of employment between the claimant and the attorney. We would note that it is not uncommon in attorney fee disputes, based on a Division Order, for the actual contract of employment not to be in evidence. In this case the hearing officer exceeded the scope of the issue, which was the reasonableness and necessity of the fees ordered by the Division.

Further, the parties stipulated that the claimant signed a contract of employment with the attorney. The hearing officer commented that "[D]espite the stipulation the parties entered into at the beginning of the hearing, there is not a valid contract and that stipulation is voided." The hearing officer at the CCH had explained in detail how a stipulation is a fact that does not need to be proven. The hearing officer does not explain how he can "void" a stipulation. Section 410.166 and 28 TEX. ADMIN. CODE § 147.4(c) (Rule 147.4(c)) provide, in part, that an oral stipulation or agreement of the parties that is preserved in the record is final and binding on the date made. Rule 147.4(c)(2) provides in part that such an agreement is binding on an unrepresented claimant through the final conclusion of all matters relating to the claim unless set aside by the Division for good cause. We note that the claimant is not contending that the contract or agreement for representation was void but only some of the fees were excessive or were for services not actually performed.

We hold that the hearing officer erred in finding that there was no valid contract of employment as ruling on a matter not at issue before him and that the attorney is not entitled to any attorney fees. The hearing officer did a credible job in determining which fees were unreasonable and which fees he "found reasonable and performed." We hold that 1.5 hours of attorney fees at \$150.00 an hour for a total \$225.00 to be reasonable and necessary.

Accordingly, we reverse the hearing officer's decision that the attorney is not entitled to attorney fees and render a new decision that 1.5 hours of attorney time at the rate of \$150.00 an hour in the Division Order for Attorney's Fees is reasonable and performed and that the attorney is entitled to \$225.00 in attorney fees.

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge