

APPEAL NO. 980036

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 5, 1997, with the record closing on October 7, 1997, a contested case hearing (CCH). The hearing officer determined that the claimant is entitled to supplemental income benefits (SIBS) for the eighth compensable quarter. In Texas Workers' Compensation Commission Appeal No. 972349, decided December 31, 1997, the Appeals Panel reversed and remanded for the hearing officer to make further findings of fact concerning good faith job search, as well as appropriate conclusions of law and award of benefits, if any.

On December 12, 1997, the hearing officer issued "COMMISSION ORDER FOR ATTORNEY'S FEES" No. 92124482-21 (Attorney Fee Processing System (AFPS) Sequence 21) covering services from March 24, 1997, through August 5, 1997. The hearing officer denied the entire \$3,300.00 in requested fees, with one item being denied as a "Duplicate Service" and all others denied for the reason "Ex Guideline/Unreasonable." Appellants (attorneys) contend that Sequence 21 is arbitrary and capricious and that there is no evidence to support the award of \$0.00. They request that the award of attorney fees be issued pursuant to Section 408.147(c) and Texas Workers' Compensation Commission (Commission) Rules. The file contains no response from the carrier or the claimant.

DECISION

Reversed and remanded.

We note at the outset the Sequence 23 orders that the approved fees are to be paid by the carrier pursuant to Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 152.1(f) (Rule 152.1(f)). However, since the case-in-chief was reversed and remanded in Appeal No. 972349, *supra*, there has been no final Commission decision on entitlement to SIBS for the eighth quarter. Therefore, no decision and order on these attorney fees should be issued until there has been a final Commission determination on SIBS for the eighth quarter.

We review attorney fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The copy of their Application for Attorney's Fees (TWCC-152) which the attorneys filed with their appeal does not include a justification text. The Review Request printout from the AFPS indicates no justification text, and the AFPS includes the following log text by the hearing officer:

PER CONVERSATION BETWEEN [hearing officer] AND [attorney 1], [hearing officer] DENIED ALL FEES WITH [attorney 1] TO RESUBMIT. FEES PREVIOUSLY APPROVED

BY [hearing officer] SHOULD BE CONSIDERED AT TIME OF RESUBMISSION.

The attorneys, in their appeal, state:

Claimant's attorneys were employed by claimant for purposes of representing him in a dispute of his entitlement to [SIBS]. Claimant's attorney did not represent (claimant) prior to the dispute of his entitlement to [SIBS] and therefore had no attorney's fees incorporated in Order number 21 [Sequence 21].

This statement is clearly in error since, if they had no attorney fees incorporated in Sequence 21, the attorneys would have had no reason to appeal it, as they have. Since Sequence 21 does deal with fees for attorney 1 and (attorney 2), the attorneys must have meant that they had no prior attorney fees incorporated in Sequence 21.

However, two other attorney fees orders, Sequence 17 and Sequence 23 (see Texas Workers' Compensation Commission Appeal No. 972549, decided January 14, 1998,) had service periods which partially overlapped the service period of Sequence 21. A comparison of the computer printout of Sequence 17 and a copy of Sequence 21 shows two items involving drafting a letter to claimant from attorney 1 on June 9, 1997, and July 7, 1997, as approved for .50 hours each in Sequence 17 and as denied for .25 hours each in Sequence 21.

The attorneys complain that there is no evidence to support the award of \$0.00. However, the burden of proving that the time billed was reasonable and necessary is on the attorneys. Texas Workers' Compensation Commission Appeal No. 951731, decided November 16, 1995.

In the case at hand, even though there was no justification text, we cannot tell from Sequence 21 by itself whether or not the fees exceeded the guidelines or whether the hearing officer abused his discretion in denying all of the fees requested.

We therefore reverse Sequence 21 and remand for a CCH on attorney fees. At that CCH the hearing officer should examine Sequence 21, together with Sequence 17, Sequence 23, and any other order covering any of the service period covered by Sequence 21. The hearing officer should then make appropriate findings of fact and conclusions of law and issue an appropriate order. No decision and order on these attorney fees should be issued until there has been a final Commission determination of claimant's entitlement to SIBS for the eighth quarter.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Christopher L. Rhodes
Appeals Judge