

## APPEAL NO. 980119

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 May 7, 1997, (hearing officer 1). On May 8, 1997, with regard to the issues at the CCH, she determined that (claimant) is entitled to supplemental income benefits (SIBS) for the first quarter and that the respondent (carrier) is liable for payment of the appellant's (attorney) attorney's fees. On May 23, 1997, hearing officer 1 entered a Commission Order for Attorney's Fees, ordering the carrier to pay the attorney's fees and expenses of \$600.00 "pursuant to [Section] 408.147(c) and [Texas Workers' Compensation] Commission Rule 152.1(f) [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f)]." On June 24, 1997 (hearing officer 2) entered a Commission Order for Attorney's Fees, ordering the carrier to pay the attorney's fees and expenses of \$596.26 pursuant to the same section and rule. The carrier paid the attorney \$600.00 and \$596.26 according to the May 23 and June 24, 1997, orders, respectively.

The carrier appealed from hearing officer 1's May 8, 1997, decision. It did not appeal the claimant's eligibility to SIBS for the first quarter but did appeal the attorney's fees issue. We considered the carrier's appeal and reversed and ordered a hearing on attorney's fees, directing hearing officer 1 to determine whether the carrier disputed a Commission determination that the claimant is entitled to SIBS. Texas Workers' Compensation Commission Order No. 97024, decided July 11, 1997. In her September 15, 1997, decision and order, hearing officer 1 found that the Commission initially determined the claimant was not eligible for SIBS for the first quarter and that the carrier was not liable for the attorney's fees.

The issue remaining after hearing officer 1's September 15, 1997, order was whether the carrier is entitled to reimbursement of attorney's fees paid to the attorney pursuant to the May 23 and June 24, 1997, orders. A CCH was held on December 17, 1997, with (hearing officer 3) presiding as hearing officer. On December 17, 1997, with regard to the issue at the CCH, she determined that the attorney shall reimburse the carrier \$600.00 for attorney's fees it paid according to hearing officer 2's May 23, 1997, order and \$596.26 for attorney's fees it paid according to hearing officer 3's June 24, 1997, order. The attorney appeals hearing officer 3's decision and order, seeks its reversal and argues that it is in error and manifestly unjust. The carrier responds and seeks an affirmance of hearing officer 3's decision.

## DECISION

We affirm.

Hearing officer 3 fairly summarizes the facts in the decision and we adopt her rendition of the facts. We discuss only those facts necessary to our decision. In the above-

referenced proceedings, the Commission initially determined that the claimant was not eligible for SIBS for the first quarter and the claimant prevailed on the issue of his eligibility to SIBS for the first quarter at a subsequent CCH. In this situation, the carrier should not have been liable for attorney's fees. A carrier is only liable for attorney's fees, and attorney's fees are not deducted from an employee's income benefits, when it disputes a Commission determination of an employee's eligibility to SIBS and then the employee prevails on the eligibility issue at a subsequent proceeding. Section 408.147(c); Rule 152.1(f). When a carrier pays an employee's SIBS for a quarter without dispute or when there has not been a Commission determination of the employee's eligibility to SIBS and the employee prevails on the eligibility issue at a subsequent proceeding, his attorney's fees are deducted from his income benefits. Section 408.221(b); Rule 152.1(c).

The situation in the claim under review developed due to erroneous Commission orders on attorney's fees. There is no dispute that hearing officer 1's May 23, 1997, order and hearing officer 2's June 24, 1997, order should have specified payment pursuant to Section 408.221(b) and Rule 152.1(c), rather than Section 408.147(c) and Rule 152.1(f). The carrier paid the attorney per the wording of the orders and was later able to show they were issued in error. An attorney only has a lien on an employee's unpaid income benefits due and does not have a lien on income benefits already paid to an employee. Rule 152.1(c). In the case under review, the carrier appealed from the orders. However, it paid the attorney pursuant to the orders because they were binding upon it pending their appeal. Rule 152.3(f).

"If an attorney has been paid more than authorized by the final order of the commission, the commission shall order that the excessive amount be reimbursed." Rule 152.3(g). Hearing officer 1's September 15, 1997, decision and order is a final order of the Commission. Section 410.169; Rule 142.16(f). There is no dispute the carrier paid \$1,196.26 more than that order authorized. Hearing officer 3 determined that the carrier, therefore, paid \$1,196.26 in excess of the Commission's final order and that the attorney shall reimburse it accordingly.

The attorney argues that the hearing officer erred in determining the attorney's fees paid per the May 23 and June 24, 1997, orders were "in excess of" a final Commission order. He maintains that there is no dispute over the reasonableness and necessity of his fees or whether they permissibly exceed the attorney's fees guidelines and, therefore, they cannot be excessive. We disagree. Hearing officer 3's determination that the "excessive" amount of attorney's fees reimbursed to the carrier has nothing to do with whether those fees were reasonable, necessary or within the guidelines. The attorney also argues that being ordered to reimburse the carrier when he has no lien against the income benefits already paid to the claimant is manifestly unjust. However, we do not review attorney's fees cases to determine whether the outcome is unjust to the attorney. We review them under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 950259, decided April 4, 1995. Hearing officer 3 applied the 1989 Act and Commission Rules regarding attorney's fees to the undisputed facts. Despite the Commission's

erroneous orders causing the need for reimbursement, we conclude that hearing officer 3 did not abuse her discretion in ordering the attorney to reimburse the carrier \$1,196.26. See Texas Workers' Compensation Commission Appeal No. 972693, decided February 2, 1998.

Hearing officer 3 did not commit error or abuse her discretion and, therefore, we affirm.

Christopher L. Rhodes  
Appeals Judge

CONCUR:

Philip F. O'Neill  
Appeals Judge

Judy L. Stephens  
Appeals Judge