

APPEAL NO. 980223
FILED MARCH 11, 1998

On December 4, 1997, a contested case hearing (CCH) was held with the hearing officer. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issue at the CCH was whether the appellant (claimant) is entitled to supplemental income benefits (SIBS) for the third quarter. In a decision signed on December 12, 1997, the hearing officer wrote that the issue was third quarter SIBS and that the claimant claimed that she was unable to work during the filing period for the third quarter; however, his decision was that the claimant is not entitled to SIBS for the fourth quarter. In an Order on Motion to Correct Clerical Error signed on March 6, 1998, but effective December 12, 1997, the Director of the Hearings Division of the Texas Workers' Compensation Commission (Commission) modified the hearing officer's decision of December 12, 1997, to reflect the filing period for the third quarter in the findings of fact and the third quarter in the conclusion of law and decision, thereby correcting the hearing officer's decision to reflect that the claimant is not entitled to SIBS for the third quarter. The claimant appealed the hearing officer's decision that she is not entitled to SIBS for the third quarter, and in Texas Workers' Compensation Commission Appeal No. 980149, decided March 9, 1998, the Appeals Panel determined that the decision of the hearing officer, as corrected by the Order on Motion to Correct Clerical Error, had become final under Section 410.169 because the claimant's appeal was not timely filed.

On or about December 11, 1997, (Attorney), the claimant's attorney at the CCH held on December 4, 1997, filed an application for attorney's fees for \$1,362.50. In a Commission Order for Attorney's Fees dated January 2, 1998, the hearing officer approved the fees requested by the claimant's attorney and ordered that those fees be paid only from the claimant's benefits and that they are to be paid only if income benefits are paid to the claimant. On February 4, 1998, another hearing officer issued a Commission Order for Attorney's Fees approving the fees for the same hours that had been approved in the attorney's fees order of January 2, 1998, but the order of February 4, 1998 provided that the fees are to be "[p]aid to attorney for an employee pursuant to Texas Labor Code §408.147(c) and Commission Rule 152.1(f)." By letter dated February 5, 1998, the hearing officer who entered the attorney's fees order of February 4, 1998, notified the parties and the claimant's attorney that that order was issued in error and had been cancelled.

The claimant has appealed the Commission's Order for Attorney's Fees dated January 2, 1998, contending that the work done by her attorney was for the purpose of securing a ruling that she is entitled to SIBS, and she requests that we revise the order to require payment of the approved attorney's fees by the carrier should she become entitled to SIBS pursuant to Section 408.147(c).

DECISION

Reversed and rendered.

The attorney's fees in issue are for work done by the claimant's attorney in regard to the issue of the claimant's entitlement to third quarter SIBS. Since the Appeals Panel has held that the hearing officer's decision, as corrected by the Order On Motion to Correct Clerical Error, that the claimant is not entitled to SIBS for the third quarter is final, the carrier is not liable under Section 408.147(c) for attorney's fees incurred by the claimant that resulted from the carrier's dispute of the claimant's entitlement to SIBS for that quarter because the claimant did not prevail on the disputed issue. Thus we deny the claimant's request to hold the carrier liable for her attorney's fees. The attorney's fees order of January 2, 1998, which orders that attorney's fees are to be paid only from the claimant's benefits, is contingent upon the claimant being paid income benefits, and since the claimant has been held not to be entitled to SIBS for the third quarter, she would not be receiving income benefits for that quarter. Thus, since the claimant has had no recovery on the issue of entitlement to third quarter SIBS, the claimant's attorney's request for attorney's fees should have been denied. Section 408.221(b). If the claimant had prevailed on the issue of SIBS entitlement for the third quarter, the carrier would have been liable for her reasonable and necessary attorney's fees.

We reverse the hearing officer's attorney's fees order of January 2, 1998, and render a decision denying the fee request of the claimant's attorney.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge