

APPEAL NO. 980271
FILED MARCH 25, 1998

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). On December 11, 1997, a contested case hearing (CCH) was held in (City), Texas, with (hearing officer 1) presiding as hearing officer 1. Hearing officer 1 determined that the claimant is entitled to supplemental income benefits (SIBS) for the 15th compensable quarter. That decision was affirmed in Texas Workers' Compensation Commission Appeal No. 980033, decided February 20, 1998.

On January 18, 1998 (hearing officer 2) issued "COMMISSION ORDER FOR ATTORNEY'S FEES" (Docket No.) (sequence 10), covering services from July 31 through September 9, 1997. Hearing officer 2 approved 2.25 hours out of 6.25 hours requested at a rate of \$150.00 per hour rather than the \$200.00 per hour requested, for a total approved fee of \$337.50 out of \$1,250.00 requested. Hearing officer 2 disapproved two items of August 27, 1997, one item of September 2, 1997, and two items of September 9, 1997, for the reason "Ex Guideline/Unreasonabl."

On January 29, 1998, hearing officer 1 issued "COMMISSION ORDER FOR ATTORNEY'S FEES" (Docket No.) (sequence 9), covering services from September 5 through December 11, 1997. Hearing officer 1 approved all 5.25 hours requested at a rate of \$150.00 per hour rather than the \$200.00 per hour requested, and approved all requested expenses, for a total approved fee of \$819.70 out of \$1,082.20 requested.

Appellant (attorney) appeals both sequence 10 and sequence 9, contending that, under Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)), the guidelines and the \$150.00 per hour limit do not apply and that the requested fees, as to both rates and items, are reasonable. Carrier responds that hearing officer 2 did not abuse her discretion in determining that the disapproved items exceeded the applicable guidelines or were otherwise not reasonable and necessary. Carrier also contends that hearing officer 2 did not abuse her discretion in determining that \$150.00 per hour was a reasonable rate for attorney's services. The file contains no response from the claimant.

DECISION

Affirmed in part and reversed and remanded in part.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995.

Dealing first with the issue of the requested fee of \$200.00 per hour, the attorney is correct that the limitation in Rule 125.4(d)(A) of \$150.00 per hour is not applicable in this case. Under Rule 152.1(f), the attorney is entitled to "receive a reasonable and

necessary attorney's fee." The attorney states in her appeal that "[t]he \$200.00 per hour rate is reasonable in light of the complexity of the issues, as well as, the attorney's extensive expertise and tract [sic] record for managing successful SIBS cases through point of appeal." The burden of proof in an attorney's fee case is on the attorney. While Texas Workers' Compensation Commission Appeal No. 951731, decided November 16, 1995, discusses the burden of proving the reasonableness of the requested hours, the same principle would apply to the reasonableness of the hourly rate requested. An application for a fee of \$200.00 per hour does not, in itself, prove that that rule is reasonable. SIBS cases are not at all uncommon and the case at hand involved only one quarter of SIBS. We do not conclude that the hearing officers abused their discretion in approving a fee of \$150.00 per hour.

Dealing next with the two disapproved items of August 27, 1997, the Attorney Fee Processing System computer printout concerning sequence 10 shows the following hearing officer log text:

HEARING WAS HELD ON JUNE 2, 1997. ALL SERVICES REQUESTED FOR [CCH] WERE PERFORMED AFTER THIS DATE BEGINNING JULY 31, 1997, AND THUS WERE UNNECESSARY OR REASONABLE [SIC]. ATTORNEY HAS PROBABLY SUBMITTED FEES FOR APPEAL RATHER THAN [CCH] AND MAY WISH TO RESUBMIT.

However, the decision and order of hearing officer 1 indicates that the CCH on the 15th quarter of SIBS was held on December 11, 1997. Since the log text is obviously in error, we reverse sequence 10 insofar as it disapproves two items of August 27, 1997, and approve .75 hours at a rate of \$150.00 per hour, for an additional approved fee of \$112.50.

We would do likewise with the three items for September 1997 which were disapproved in sequence 10, except that a document dated January 8, 1998, has come to our attention, in which the Clerk of the Supreme Court of Texas certifies that the attorney "was suspended from the active rolls of the State Bar of Texas on September 01, 1997, due to nonpayment of Texas Attorney Occupation Tax and/or associated penalties or interest and is not currently authorized to practice as an attorney and counselor at law in the STATE OF TEXAS." This matter is not developed in the record before us.

Rule 150.2(a) provides:

An attorney who represents any party before the commission [Texas Workers' Compensation Commission] shall be licensed to practice law by the State Bar of Texas in order to receive an attorney's fee.

Rule 152.1(a) states:

To be eligible to earn a fee, an attorney representing any party shall hold an active license to practice law in Texas and not be currently under suspension for any reason.

Rule 150.2(c) provides that an attorney may be disqualified after a hearing from representing any party before the Commission for being suspended or disbarred by the State Bar of Texas. Rule 150.3(a)(3) provides that a person who is not an attorney or an adjuster for the carrier may provide services before the Commission, upon written authorization from the claimant, provided that "[n]o fee or remuneration shall be received either directly or indirectly from a claimant." Thus, while the rules require a hearing before a suspended or disbarred attorney could be prohibited from representing a client before the Commission, he or she could not receive a fee for doing so in accordance with the above-cited rules. We therefore remand sequence 10 for consideration of the suspension letter from the Clerk of the Supreme Court of Texas, which is attached hereto.

We affirm sequence 9. We reverse sequence 10 and remand for further consideration in light of the matters stated in this opinion.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge