

APPEAL NO. 990196

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 November 6, 1998. The issue at the CCH was whether the appellant (claimant) sustained a compensable injury, in the form of an occupational disease, on _____. The hearing officer determined that the claimant did sustain a compensable injury, in the form of an occupational disease, on _____.

On January 20, 1999, the hearing officer issued a Commission Order for Attorney's Fees (Order), covering fees and services provided by the claimant's attorney for the period from October 15, 1998, through January 6, 1999, approving 5.00 hours out of 5.50 hours requested, for a total approved fee, including expenses, of \$725.00 out of \$800.00 requested. The claimant appeals. She agrees that the respondent (attorney) should be paid his fees, but "not by the claimant since the benefit wages will only be half of her weekly working wages, and with a dependent child in school its going to be very critical during my time of recovery." The file contains no response from the attorney or the carrier.

DECISION

We affirm the Order.

While we understand the claimant's argument, Section 408.221(b) provides in relevant part that "[e]xcept as provided by Section 408.147(c), the [claimant's] attorney's fee shall be paid from the claimant's recovery." Section 408.147(c) applies only to a case in which "an insurance carrier disputes a commission [Texas Workers' Compensation Commission] determination that an employee is entitled to supplemental income benefits [SIBS] or the amount of [SIBS] due and the employee prevails on any disputed issue. . . ." Since this CCH did not include any issue of entitlement to or amount of SIBS, this exception does not apply and the attorney's fees are paid from the claimant's recovery. Section 408.221(c) lists the factors that the Commission shall consider in approving a fee and Section 408.221(h) limits the fee to 25% of the claimant's recovery. These provisions of the 1989 Act do not permit the attorney's fees in this case to be paid by the carrier but require that the fees be paid from the claimant's recovery.

Finding no abuse of discretion by the hearing officer, we affirm the Order.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge