

## APPEAL NO. 990533

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 10, 1998. The issues at the hearing were entitlement to supplemental income benefits (SIBS) for the first, second, third, and fourth quarters. The parties reached an agreement before the hearing that the claimant was entitled to SIBS for the fourth quarter, but was not entitled to SIBS for the first, second, and third quarters. The hearing officer adopted the written agreement as her findings of fact. On October 28, 1998 a benefit review officer issued a Commission Order for Attorney's Fees (Order), for services performed in the period from June 1, 1998, through September 4, 1998, approving the requested hours and expenses for a total approved fee of \$3,140.07. He ordered the self-insured to pay the fee to the respondents (attorneys) in accordance with Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). Section 408.147(c) and Rule 152.1(f) provide that a carrier is liable for reasonable and necessary attorney's fees incurred by the employee if it disputes a Commission determination that an employee is entitled to SIBS or the amount of SIBS and the employee prevails on any disputed issue. By a letter dated November 20, 1998, the self-insured requested a hearing to contest the Order. A hearing was held on February 9, 1999. The issues at the hearing were whether the self-insured timely disputed the Order and whether the self-insured should pay the claimant's attorney's fees directly or out of the claimant's recovery. The hearing officer determined that the self-insured's dispute of the Order was not timely and that the Order has become final and binding. The self-insured appeals, contending that Section 408.147(c) does not apply to this case, that the order was void *ab initio*, and that the Texas Workers' Compensation Commission (Commission) cannot by rule apply Section 408.147(c) to this situation, regardless of when the self-insured's request for a hearing was filed. The self-insured also urges that the hearing officer erred in considering a letter from the attorneys, a copy of which was sent to the self-insured, making additional argument and citing Appeals Panel decisions which were not raised at the hearing. The attorneys respond that the self-insured was clearly late in filing its dispute. The attorneys also argue that the Order was correct because the fees were incurred by the claimant in the resolution of a dispute over SIBS. Finally, the attorneys argue that, since they had no prior notice of the basis of the self-insured's dispute of their fees, their additional research which resulted in letters from both parties was performed and that there is no indication that they were considered by the hearing officer in reaching its conclusions. The file contains no response from the claimant (although the attorney's response is styled as a response by the claimant).

## DECISION

We affirm the decision of the hearing officer.

The carrier does not contend in its appeal that its request for a hearing was timely, but contends that a challenge could be made to the Order at any time because it was void *ab initio*. In Texas Workers' Compensation Commission Appeal No. 971769, decided October 14, 1997, the Appeals Panel considered a similar case. In that case, two attorney's fee orders were issued, the carrier did not timely request a hearing to contest

those orders, and a later decision on remand determined that the claimant was not entitled to SIBS for one of the quarters at issue. Appeal No. 971769 affirmed the hearing officer's decision that the hearing requests were untimely; thus, the orders became final, and the carrier was required to pay the fee as ordered. The 1989 Act gives the Commission the responsibility for approving attorney's fees. In implementing a system to carry out that responsibility, the Commission has set deadlines for filing a contest of an attorney's fee order, namely a 15-day period, which mirrors the period for appealing a benefits determination. The deadline for contesting the Order was set out in the Order itself.

The Order was issued October 28, 1998. Under Rule 152.3(d), the self-insured had 15 days from the date it received the Order to dispute it. The hearing officer made an unappealed finding that the self-insured received the Order on October 28, 1998, "through the placement of the order in the Self-Insured's Austin representative's box." Thus, the self-insured had until November 12, 1998, to request a hearing. The self-insured's letter requesting a hearing is dated November 20, 1998, and is therefore, untimely. As such, the hearing officer properly determined the Order has become final and that the self-insured is required to pay attorneys' fees in accordance with that Order.

We find no merit in the self-insured's assertion that the hearing officer erred in permitting the attorneys to submit additional argument after the close of the hearing. We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The hearing officer did not abuse his discretion by allowing the submission of additional argument, particularly, where, as here, the self-insured's attorney could, and did, submit a response. We perceive no error.

The decision and order of the hearing officer is affirmed. The self-insured shall pay any presently unpaid portion of the attorneys' fees in accordance with the final Order of October 28, 1998.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge