

## APPEAL NO. 990752

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 January 4, 1999. The issue at the CCH was whether the claimant is entitled to supplemental income benefits (SIBS) for the fifth compensable quarter, October 3, 1998, through January 1, 1999. The hearing officer determined that the claimant is entitled to SIBS for the fifth compensable quarter.

On March 17, 1999, the hearing officer issued a Commission Order for Attorney's Fees, Sequence 17 (Order No. 1), covering services for the period from October 3, 1998, through January 15, 1999, approving 20.80 hours out of 21.00 hours requested, for a total approved fee of \$3,020.00 out of \$3,050.00 requested. Order No. 1 stated that it is to be paid to the respondent (attorney 1) pursuant to Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). By a letter dated April 2, 1999, from its attorney (attorney 2), the carrier appealed "the attorney's fees awarded in the Commission Order for Attorney's Fees dated March 17, 1999." The letter states that the carrier "disputes the attorney's fees as not reasonable and in excess of the guidelines provided by the [1989 Act] and adopted Commission [Texas Workers' Compensation Commission] rules." The file contains no response from attorney 1 or the claimant.

### DECISION

We affirm Order No. 1.

The carrier contends that the fees approved by Order No. 1 are not reasonable, without stating why, and are in excess of the guidelines. Section 408.147(c) and Rule 152.1(f) provide that if a carrier contests a claimant's entitlement to SIBS or the amount of SIBS due and the claimant prevails on any disputed issue, the carrier is liable for reasonable and necessary attorney's fees as a result and the guidelines do not apply to such an award of fees. They may, however, be considered reference points.

As to the reasonableness of the approved fees, the hearing officer approved time for participation in the benefit review conference (BRC) which would have been within the guidelines, had they been applicable. In fact, the hearing officer reduced the requested 1.50 hours for attending the BRC to 1.30 hours on the ground that the BRC lasted 60 minutes plus 30 minutes drive time. Since one hour and 30 minutes is 1.50 hours, she should have approved the full amount requested. However, attorney 1 has not appealed Order No. 1, so we will not correct this error. The hours requested for communications would be within the guidelines for three of the months covered by the order and are over the guidelines by only one hour as to the other month. The hours requested and approved for informal resolution without Commission intervention would be within the guidelines.

The hours requested and approved for participation in the CCH amounts to the time in the CCH plus 6.50 hours. While this is in excess of the guidelines, which provide for

actual time in the CCH plus 4.00 hours, Rule 152.4(c)(6), the guidelines do not apply and the additional 2.50 hours does not appear on its face to be so excessive as to be an abuse of discretion. The carrier offers no reasons why it believes the fees to be excessive. We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995.

Finding no abuse of discretion by the hearing officer in Order No. 1, we affirm Order No. 1.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge