

APPEAL NO. 991144

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Contested case hearings (CCH) were held on July 9, 1997, November 6, 1997, April 3, 1998, and November 13, 1998. The issues at the CCHs were whether the claimant is entitled to supplemental income benefits (SIBS) for the eighth, ninth, 11th, 12th, and 13th compensable quarters. The hearing officer determined that the claimant is not entitled to SIBS for any of these quarters. The claimant appealed the hearing officer's decisions and the Appeals Panel affirmed the decisions in Texas Workers' Compensation Commission Appeal No. 971536, decided September 17, 1997, Texas Workers' Compensation Commission Appeal No. 972581, decided January 27, 1998, Texas Workers' Compensation Commission Appeal No. 980960, decided June 24, 1998, and Texas Workers' Compensation Commission Appeal No. 982941, decided January 21, 1999, respectively. The claimant appealed some or all of these Appeals Panel decisions to the County Court at Law of (City) County. (The appellant's (carrier) appeal has attached a judgment of that court dealing with the eighth, 12th, and 13th quarters of SIBS and the respondent's (attorney) response indicates that all of the Appeals Panel decisions and quarters in question were appealed.)

On May 18 and 19, 1999, attorney issued four Commission Orders for Attorney's Fees, sequences numbers 24, 25, 26, and 27, approving attorney's fees for the attorney, to be paid by the carrier pursuant to Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)), in the amount of \$637.50, \$637.50, \$787.50, and \$637.50, respectively. On May 21, 1999, JR, the same person as the hearing officer, issued four Commission Orders on Attorney's Fees, sequence numbers 28, 29, 30, and 31, approving attorney's fees, also payable by the carrier, in the amount of \$2,075.00, \$1,987.50, \$2,342.50, and \$2,200.00, respectively, for a total approved fee amount of \$11,305.00.

The carrier appeals all of these orders, contending that the fees in question are not the result of a Texas Workers' Compensation Commission (Commission) order regarding SIBS entitlement. The carrier also states that the Commission does not have jurisdiction of fees incurred at the District Court (sic) level. The carrier asks that the fees "be deducted out of the claimant's benefits instead of pain [sic] in addition to the claimant's benefits." The attorney responds that the fees in question were all for services rendered in regard to the Commission dispute resolution proceedings and not before the trial court. The attorney also contends that the entitlement to SIBS for each of the quarters in question was disputed by the carrier upon the filing of the Statement of Employment Status (TWCC-52) for that quarter and that, under Appeals Panel precedent, the carrier is liable for the fees, since the claimant prevailed on the issue of entitlement as to each quarter. The file contains no response from the claimant.

DECISION

We reverse and remand the orders.

The attorney for the claimant is correct in his discussion of Appeals Panel precedent in connection with SIBS attorney's fees. In Texas Workers' Compensation Commission Appeal No. 970999, decided July 11, 1997, the Appeals Panel stated:

In Texas Workers' Compensation Commission Appeal No. 950534, decided May 19, 1995, the Appeals Panel determined that the phrase "commission determination" in Section 408.147(c) is the Commission's initial determination with respect to the first quarter. Thus, in Appeal No. 950534, we rejected the carrier's assertion that it was only liable for those fees incurred after the hearing officer's decision awarding SIBS to the claimant. We have likewise rejected the argument that a carrier's liability for the claimant's attorney's fees in a SIBS case is limited solely to the first quarter, the only quarter for which the Commission makes a determination. See Texas Workers' Compensation Commission Appeal No. 961981, decided November 18, 1996, and the cases cited therein. Finally, in Texas Workers' Compensation Commission Appeal No. 962504, decided January 27, 1997, the Appeals Panel rejected the carrier's argument that it was not liable for attorney's fees under Section 408.147(c) because it was not disputing a Commission determination. In that case, the Commission's initial determination was that the claimant was entitled to first quarter SIBS and the claimant applied for and received first, second and third quarter SIBS. Thereafter, the claimant was found not to be entitled to SIBS for the fourth quarter. She waived her entitlement to fifth and sixth quarter SIBS. The claimant was awarded seventh and eighth quarter SIBS and the fee application at issue in Appeal No. 962504 was for attorney's fees for the claimant's attorney for the seventh and eighth quarters.

The carrier argued that, since there had been an intervening determination by the Commission that the claimant was not entitled to SIBS in the fourth quarter, it was not liable for the claimant's attorney's fees. In rejecting that argument, Appeal No. 962504 stated:

[T]he carrier maintains that Appeal No. 950534 is limited to those circumstances where a carrier is contesting continuing entitlement to SIBS. Thus, it asserts, that where, as here, there has been an intervening determination by the Commission that the claimant is not entitled to SIBS and, accordingly, the claimant is applying for reinstated benefits, the carrier is not liable for attorney's fees even if the claimant prevails. We cannot agree that the holding in Appeal No. 950534 is so limited. To the contrary, that case states that the phrase "commission determination" is synonymous with the phrase "initial determination." Thus, pursuant to Section 408.147(c), when the Commission has made an initial determination that the claimant is entitled to SIBS and the carrier later disputes a claimant's entitlement to SIBS in subsequent quarters, the requirement that carrier is disputing a

"commission determination" is satisfied. Thereafter, the carrier's liability for attorney's fees becomes dependent upon whether or not the claimant prevails on a disputed issue. The Commission determination that the claimant was not entitled to SIBS in the fourth compensable quarter does not operate to relieve the carrier of its potential liability for attorney's fees incurred by the claimant because of the carrier's dispute of the claimant's entitlement to a subsequent quarter of SIBS. Rather, the success or failure of its dispute is determinative of its liability for the claimant's attorney's fees.

There is no evidence in the record before us concerning whether the Commission's initial determination was that the claimant was entitled to SIBS for the first quarter. The hearing officer should address this issue at the hearing on remand of this case. An initial review of the items in the orders appears to indicate that the services involved were in connection with the Commission's dispute resolution proceedings and not with the subsequent judicial review.

As we have previously mentioned, the judgment of the County Court at Law of (City) County attached to the carrier's appeal covers only Appeal Nos. 971536 and 982941, *supra*, and the eighth, 12th, and 13th quarters of SIBS. The hearing officer should determine if there is another judgment covering Appeal Nos. 972581 and 980960, *supra*, and the ninth and 11th quarters of SIBS and if the claimant prevailed in that judgment. The Commission's General Counsel's office has advised that it has no copy of the judgment attached to the carrier's appeal or of any other judgment as to the ninth and 11th quarters in its files. Section 410.258 provides, effective for a proceeding initiated on or after September 1, 1997, that the party who initiates a proceeding under that subchapter or Subchapter G must file any proposed judgment or settlement made by the parties with the executive director of the Commission not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement by mailing the proposed judgment or settlement to the executive director by certified mail, return receipt requested. Section 410.258(a). Section 410.258(g) provides that a judgment entered or settlement approved without complying with the requirements of that section is void. The hearing officer should determine at the hearing on remand whether or not the claimant complied with this provision and, if not, what effect that has on a determination as to whether or not the claimant finally prevailed as to SIBS for the quarters in question. The hearing officer should determine whether the County Court at Law judgment or judgments have been appealed. The hearing officer should determine on what quarters of SIBS the claimant prevailed and should determine what services pertain to each of those quarters. The hearing officer should also determine whether the claimant was entitled to SIBS for the first quarter.

We reverse and remand the orders for a CCH to determine the questions discussed in this opinion.

Based on these determinations, the hearing officer should determine the carrier's liability, if any, for the attorney's fees of the claimant's attorney.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge