

## APPEAL NO. 991628

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 May 26, 1999. The issues at the CCH were:

1. What is the accrual date of the Lifetime Income Benefits [LIBS]?
2. What amount of [LIBS] does the Subsequent Injury Fund [SIF] owe, and for what time period?
3. What is the average weekly wage [AWW]?

The hearing officer determined that the accrual date of LIBS is Days after, the eighth day after the date of injury; that the AWW is \$450.82; and that the SIF owes LIBS in certain amounts specified in the decision. The SIF appealed and the claimant responded. The Appeals Panel affirmed. Texas Workers' Compensation Commission Appeal No. 991293, decided July 30, 1999.

On July 12, 1999, issued a Commission Order for Attorney's Fees (Order), covering services for the period from June 21, 1999, through July 1, 1999, approving 0.00 hours out of 5.00 hours requested, for an approved fee of \$0.00 out of \$750.00 requested. Three items were all denied for the reason "Ex Guideline/ Unreasonabl." All three items were for actions connected with review by the Appeals Panel. The services were receipt/review of documents on June 21, 1999; legal research on June 23, 1999; and drafting and filing of pleadings/documents on June 30, 1999. The appellant (attorney) appeals, contending that the carrier lost the initial CCH and appealed, with the claimant responding, and that later another CCH was necessary to determine additional issues, in which the carrier again lost and appealed, with the claimant again responding. The attorney states that the fees claimed are for services rendered in responding to the carrier's second appeal. The file contains no response from the claimant or the carrier.

## DECISION

We reverse the Order and render a decision approving the hours and fee requested.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. A review of the Texas Workers' Compensation Commission's (Commission) Dock\_it system shows that the claimant's response in Appeal No. 991293, *supra*, was received July 1, 1999. This coincides with the dates of the services denied in the Order. A search of the Commission's Attorney Fee Processing System (AFPS) shows that no other fees for review by the Appeals Panel corresponding with these dates has been approved in other orders. Other appeals dealing with this claimant are Texas Workers' Compensation Commission Appeal No. 982917, decided January 27, 1999; Texas Workers' Compensation

Commission Appeal No. 981382, decided August 10, 1998; and Texas Workers' Compensation Commission Appeal No. 961083, decided July 17, 1996 (Unpublished). In Texas Workers' Compensation Commission Appeal No. 960710, decided April 11, 1996, we reversed a denial of fees for a second appeal involving different issues where a previous order had involved fees for the earlier appeal. Similarly, in the case at hand, any fees approved for appeals to the Appeals Panel involved earlier appeals. This case involves an application for, and denial of, 5.00 hours for review by the Appeals Panel. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c)(7) allows 5.00 hours for participation in the administrative appeal process. The fees requested did not exceed the guidelines and abused his discretion in denying these fees.

We reverse the Order and render a decision approving the requested fees, for a total approved time of 5.00 hours, as requested, and a total approved fee of \$750.00 as requested.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge