

APPEAL NO. 992035

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 June 8, 1999. The issues at the CCH were whether the claimant is entitled to supplemental income benefits (SIBS) for the eighth and ninth quarters. The hearing officer determined that the claimant is entitled to SIBS for the eighth quarter and is not entitled to SIBS for the ninth quarter.

On July 28, 1999, the hearing officer issued a Commission Order for Attorney's Fees (Order 1), covering services for the period from February 9, 1999, through June 8, 1999, 15.10 hours out of 31.55 hours requested, for a total approved fee of \$2,265.00 out of \$4,732.50 requested, to be paid only from the claimant's benefits. All disapproved items were disapproved for the reason "Ex Guideline/Unreasonabl."

According to the appellant's (attorney) appeal, she then contacted the Texas Workers' Compensation Commission's (Commission) _____ field office and asked that Order 1 be rescinded to show that the fee is approved pursuant to Section 408.147(c), that the _____ field office allegedly rescinded Order 1 and issued another order (Order 2), but that the majority of the fees were declined for duplicate service and multiple reasons because the computer was registering Order 1.

On August 16, 1999, (hearing officer 2) issued Order 2, covering services for the period from February 9, 1999, through June 8, 1999, approving 0.50 hours out of 31.55 hours requested, for a total approved fee of \$75.00 out of \$4,732.50 requested, payable pursuant to Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The disapproved items were disapproved for the reason "Duplicate Service" or for "Multiple Reasons."

The attorney's appeal includes a copy of a letter to her firm from (hearing officer 3), dated August 27, 1999, stating that Order 1 is amended so as to be payable pursuant to Section 408.147(c) and Rule 152.1(f) and that Order 2 is rescinded in its entirety. While the attorney did not appeal either order within 15 days of receipt, she did file her appeal within 15 days of receiving this letter, which was the final effective version of both Order 1 and Order 2.

DECISION

We reverse Order 1 as amended and remand.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The amendment to Order 1 correctly revised it so as to be payable by the carrier. However, as

to the fees approved, the hearing officer's log text, as shown in the Attorney Fee Processing System, reads in part:

REQUEST SUBMITTED WITHOUT JUSTIFICATION. FEES EXCEEDING GUIDELINES WERE DENIED FOR THAT REASON.

The burden of proof is on the attorney to prove the reasonableness of the requested hours. Texas Workers' Compensation Commission Appeal No. 951731, decided November 16, 1995. This is so even though the guidelines do not apply to attorney's fees paid by the carrier when the carrier has unsuccessfully contested a Commission determination of entitlement to SIBS. Section 408.147(c); Rule 152.1(f). The hearing officer abused his discretion in disapproving items for the reason "Ex Guideline/Unreasonable" without any indication as to how they were not reasonable and necessary. Texas Workers' Compensation Commission Appeal No. 981333, decided August 3, 1998.

We reverse Order 1 and remand for a hearing at which the attorney may show the reasonableness of the hours requested. She should also apportion her fees between the quarter for which the claimant prevailed and the quarter for which the claimant did not prevail as to SIBS. If the hearing officer denies any of the hours requested, he should indicate why he determines that they are not reasonable and necessary.

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 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:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge