

APPEAL NO. 000404

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 December 15, 1998. The issue at the CCH was whether the claimant is entitled to supplemental income benefits (SIBS) for the first compensable quarter. The hearing officer determined that the claimant is entitled to SIBS for the first compensable quarter. The claimant appealed to correct an error in stating the period covered by the first compensable quarter. The Appeals Panel affirmed, as reformed, the hearing officer's decision after correcting it to state the correct period covered by the first compensable quarter. Texas Workers' Compensation Commission Appeal No. 990118, decided March 5, 1999 (Unpublished).

On February 2, 2000, the hearing officer issued a Commission Order for Attorney's Fees (Order), covering services from September 25, 1998, through December 30, 1998, approving 30.99 hours out of 58.24 hours requested, for a total approved fee of \$4,648.50 out of \$8,736.00 requested, the fee to be paid pursuant to Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The appellant (attorney) appeals, contending that all of the requested fees were reasonable and necessary and pointing out that the Appeals Panel has held that in SIBS disputes where the fee is paid by the carrier the guidelines do not apply. The attorney asks that the Appeals Panel approve all of the denied fees. The appeal file contains no response from the claimant or the carrier.

DECISION

We reverse 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 hearing officer disapproved all of the hours requested by the attorney for preparation for the benefit review conference (BRC) for the reason "Ex Guideline/Unreasonabl." The hearing officer disapproved four items for "Multiple Reasons" and disapproved 16 other items (not counting the BRC items) for the reason "Ex Guideline/Unreasonabl." As the attorney has pointed out, the guidelines do not apply in this case. Rule 152.1(f). Pursuant to Section 408.147(c), the carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of the carrier's dispute. Attorney's fees awarded are not subject to Section 408.221(b), (e), and (h). The hearing officer entered into the Texas Workers' Compensation Commission's (Commission) Attorney Fee Processing System (AFPS) the following log text:

ATTY REQUESTS THAT WERE DENIED WERE DONE SO B/C OF NO JUSTIFICATION TEXT.

The AFPS indicates that no justification text was submitted. The attorney included with her appeal a copy of her Application for Attorney's Fees (TWCC-152), which included a 24-page copy of her Client Billing Worksheet. While this may not technically constitute a justification text, a justification text is designed to justify exceeding the guidelines, which do not apply to this case. The hearing officer needs to determine whether the requested fees are reasonable and necessary. The Client Billing Worksheet should be helpful in this regard. The hearing officer's use of terms like "Multiple Reasons" and "Ex Guideline/Unreasonabl" gives the Appeals Panel no basis on which to determine whether she has abused her discretion in denying the disapproved items.

We therefore reverse the Order and remand for the hearing officer to provide a reasoned justification for disallowance of any item which she disapproves. The hearing officer may, at her discretion, hold a CCH on remand or allow the parties to submit and respond to written materials. We note that at the end of the CCH the hearing officer gave both attorneys an opportunity to submit justification for exceeding the guidelines at that time, later in writing, or both, and the attorney for the carrier and the attorney for the claimant both indicated that they would submit justification at a later date.

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.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge