

APPEAL NO. 000597

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 12, 1999. The issue at the hearing was whether the claimant is entitled to supplemental income benefits (SIBs) for the ninth compensable quarter. The hearing officer determined that the claimant is entitled to SIBs for the ninth compensable quarter. The carrier appealed the hearing officer's decision and the Appeals Panel affirmed. Texas Workers' Compensation Commission Appeal No. 991244, decided July 26, 1999.

On March 2, 2000, the hearing officer issued a Commission Order for Attorney's Fees (Order), covering services for the period from December 28, 1998, through May 28, 1999, approving 18.42 hours out of 27.92 hours requested, for a total approved fee of \$2,763.00 out of \$4,188.00 requested, the fees 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)). Three items were disapproved: 1.00 hour of the 3.50 hours requested for preparing for the benefit review conference (BRC) on March 12, 1999; 4.50 hours of a total of 8.00 hours requested for preparing for the hearing on May 11, 1999; and 4.00 hours for travel time to attend the BRC on March 15, 1999. The first two items were disapproved for the reason "Ex Guideline/Unreasonable," and the last item was disapproved for "Multiple Reasons." The appellant (attorney) appeals, pointing out that the guidelines do not apply to SIBs attorney's fees cases where the carrier is paying the fees under Section 408.147(c). The attorney also indicates that there may have been some confusion because, while he attended the hearing by phone, he attended the BRC in person, which necessitated a round trip from (city 1) to (city 2), where the BRC was held. The attorney asks that the Appeals Panel approve all of the denied fees. The appeal file contains no response from the carrier or the claimant.

DECISION

We reverse the Order and render a decision approving the disapproved item for travel time and remand for a hearing to determine whether the other two disapproved items are reasonable and necessary.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The attorney includes with his appeal a copy of his Application for Attorney's Fees (TWCC-152) including his justification text including, but not limited to, a computer print-out of the attorney's activities in connection with the items in the Order. The Attorney Fee Processing System (AFPS) incorrectly indicates that there was no justification text submitted and indicates that the hearing officer entered no log text in connection with the Order.

As the attorney points out, attorney's fees paid by the carrier where the claimant prevails on a quarter of SIBs are not subject to the guidelines. Section 408.147(c); Rule 152.1(f). Since the hearing officer apparently did not consider the justification text and gives

no reasoned justification for disapproving the disputed items, merely using the designations "Ex Guideline/Unreasonabl" and "Multiple Reasons," we have no basis upon which to determine whether or not he abused his discretion in disapproving those items. Texas Workers' Compensation Commission Appeal No. 960158, decided March 5, 1996; Texas Workers' Compensation Commission Appeal No. 970423, decided May 15, 1997. While we have indicated that some justification is necessary even in these SIBs cases, Texas Workers' Compensation Commission Appeal No. 970805, decided June 18, 1997, and have held that a computer printout is not a justification text, Texas Workers' Compensation Commission Appeal No. 972323, decided December 22, 1997, the justification text in the case at hand, while not lengthy in itself, was filed in addition to the detailed computer printout and, together with it, provides considerable information as to the fees requested. The AFPS indicates incorrectly that no justification text was filed, and there is no indication that the hearing officer considered the justification text. The hearing officer abused his discretion by not considering it and by merely stating generic reasons for disapproving the three disapproved items.

Travel time was clearly justified as to the third item denied and the Order is reversed and a decision is rendered approving 4.00 hours of travel time to attend the BRC. The Order is also reversed as to the other disapproved items and remanded for a hearing to determine if those two items are reasonable and necessary.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge