

APPEAL NO. 011803
FILED SEPTEMBER 12, 2001

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 April 13, 2001. The hearing officer determined that the claimant was entitled to supplemental income benefits (SIBs) for the 2nd, 3rd, 4th, 8th, 9th, and 11th quarters; that the claimant was not entitled to SIBs for the 1st, 5th, 6th, 7th, and 10th quarters; and that the respondent (carrier) is relieved of liability for SIBs for the 8th, 9th, and 11th quarters because of the claimant's failure to file her applications for those quarters. Apparently, on July 12, 2001, the hearing officer issued a Commission [Texas Workers' Compensation Commission] Order for Attorney's Fees with regard to the appellant (attorney) approving all of the requested fees and expenses, specifically \$5,437.50 in fees and \$73.00 in expenses, for a total approved fee of \$5,510.50. In his appeal, the attorney asserts that the hearing officer erred in awarding those fees because she ordered that they be paid out of the claimant's benefits rather than by the carrier in accordance with Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). In its response, the carrier urges affirmance.

DECISION

Reversed and remanded.

Our ability to review this case is hampered by the fact that we do not have copies of either the attorney's application for attorney's fees or the Commission order awarding fees. A review of the Attorney Fee Processing System records reveals that a total fee of \$5,510.50 was approved on July 12, 2001; that the request was "manually processed"; and that it was not processed as a request for fees in a SIBs case. Thus, as the parties state, it appears that the hearing officer ordered that the fees be paid from the claimant's benefits rather than by the carrier. In the absence of either the application or the Commission order, we have no basis for determining if the hearing officer abused her discretion in issuing the order. As such, we remand this case for a hearing on attorney's fees. For purposes of the hearing on remand, the hearing officer is advised that we have previously determined that where, as here, the adjudication of SIBs dispute has resulted in a determination of entitlement to some quarters and nonentitlement to other quarters, the hearing officer entering the order on attorney's fees must allocate the fees amongst the different quarters in that the carrier is only liable for the portion of the fees attributable to the SIBs quarters to which it disputed the claimant's entitlement and on which the claimant later prevailed. Texas Workers' Compensation Commission Appeal No. 971268, decided August 11, 1997; Texas Workers' Compensation Commission Appeal No. 971019, decided July 15, 1997. In addition, at the hearing on remand, the hearing officer should consider that in Texas Workers' Compensation Commission Appeal No. 011478-S, decided August 13, 2001, we determined that under the language of Section 408.147(c), the carrier does not become liable for attorney's fees until it disputes the claimant's entitlement to SIBs by filing its request for a benefit review conference. Finally, we note that at the hearing on

remand, the hearing officer should follow the procedures for obtaining and putting into the record the information about the true corporate name of the insurance carrier and its registered agent for service of process to ensure compliance with HB 2600.

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, which was amended June 17, 2001, to exclude Saturday, Sundays, and holidays listed in the Texas Government Code in the computation of the 15-day appeal and response periods.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge