

APPEAL NO. 020501
FILED MARCH 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees was issued on November 27, 2001, approving attorney's fees requested by the nominal respondent in this "appeal," the attorney for the appellant (claimant), in connection with preparing for and attending a contested case hearing (CCH) that was held on November 14, 2001. The attorney submitted a claim for 9.25 hours of time spent on the claimant's case between September 28 and November 14, 2001; the total approved fee was \$1,387.50. As we understand the history of this case as it relates to the issue before us, on December 5, 2001, the claimant contacted the field office and indicated that she disputed that the attorney should be entitled to any fees because he lost at the CCH. From the sketchy case notes which accompanied the file, we are unable to discern what, if anything, the field office advised the claimant concerning the situation, but it is apparent that someone thought it was appropriate that this matter be treated as an appeal and forwarded to the Appeals Panel for resolution. There is no indication that any notice of the claimant's complaint was ever forwarded to the attorney, or that the attorney was afforded any opportunity to respond.

DECISION

This matter is not properly before the Appeals Panel.

We see from the decision and order signed by the hearing officer on November 16, 2001, that the hearing officer determined that the claimant did not sustain a compensable injury on _____, and the claimant did not have disability. We have reviewed records available to the Appeals Panel, and see that the claimant submitted a pro se appeal of that decision and order, which was affirmed in Texas Workers' Compensation Commission Appeal No. 013099, decided January 23, 2002.

We note that the Order for Attorney's Fees specifies that attorney's fees are to be paid "**ONLY from the claimant's benefits.**" (Emphasis in original.) The order also contains the statement "**ATTORNEY'S FEES ARE TO BE PAID ONLY IF INCOME BENEFITS ARE PAID TO THE CLAIMANT.**" (Emphasis in original.) A claimant is advised that they must "appeal the decision of the hearing officer to the **appeals panel** no later than the 15th day after you receive this order." (Emphasis in original.) The Order goes on to advise that "[a] request for review by the appeals panel must be made in writing no later than 15 days after receipt of this order to the commission's central office. The contesting party shall send a copy of the request to all other parties."

This matter does not qualify as an appeal regarding attorney's fees for two reasons. First, and foremost, there were no attorney's fees awarded by the Order for Attorney's Fees. The claimant was not awarded any income benefits, so there can be no claimant's attorney's fees in this case. We understand that it is common practice for hearing officers

to issue an Order for Attorney's Fees even when there is no award of income benefits, in order to preserve the information concerning attorney's fees in the case file. This is done because the determination of no entitlement to income benefits is subject to being reversed during the course of review by the Appeals Panel, or subsequent judicial review. After a reversal, payment of attorney's fees from income benefits would then be appropriate, and the prior order serves as a lien to insure payment of the approved fees to the attorney. Second, the claimant has never submitted a written request for review to the Appeals Panel, nor has she sent a copy of such request to all other parties.

We hold that this matter is not properly before the Appeals Panel and that there is no action we can take with regard to the case.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Philip F. O'Neill
Appeals Judge