

APPEAL NO. 021432
FILED JULY 25, 2002

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 May 3, 2002. The hearing officer determined that he did not have jurisdiction to hear the appellant's (carrier) dispute of attorney's fees, citing Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3(e) (Rule 152.3(e)), and dismissed the case. The carrier appeals, asserting that it properly contested the award of attorney's fees by requesting a CCH on the matter. The carrier requests that the hearing officer's decision be vacated and the matter remanded for a hearing. In the alternative, the carrier requests that the Appeals Panel render a decision reducing the award of attorney's fees to the respondent (claimant's attorney). No response was filed to the carrier's appeal.

DECISION

Affirmed.

The request for attorney's fees follows a CCH on December 13, 2001, awarding the claimant supplemental income benefits (SIBs) for the fifth quarter. That hearing was held before a hearing officer other than the hearing officer who presided over the attorney's fee dispute. The claimant's attorney filed an Application for Attorney's Fees (TWCC-152) for services provided to the claimant for the period of October 1 through December 31, 2001, relating to SIBs. In an Order for Attorney's Fees (Order) dated February 22, 2002, the above-named hearing officer awarded the claimant's attorney the fees requested. On March 5, 2002, the carrier disputed the award and requested a CCH on the matter. The carrier now appeals, following the hearing officer's dismissal of the proceeding below.

Rule 152.3 governs the process for disputing an award of attorney's fees. Rule 152.3(d) provides, in part, that "[e]xcept as provided in subsection (e) of this section, an attorney, claimant, or carrier who contests the fee fixed and approved by the Texas Workers' Compensation Commission shall request a benefit [CCH]." (Emphasis added.) Rule 152.3(e) provides that "[a]n attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a benefit [CCH] shall request review by the appeals panel pursuant to the provisions of §143.3 of this title (relating to Requesting the Appeals Panel to review the Decision of the Hearing Officer)." The carrier contends that subsection (e) "only applies where the parties introduce evidence of attorney fees at the CCH and the hearing officer makes findings in a CCH decision." We addressed a similar argument in Texas Workers' Compensation Commission Appeal No. 952120, decided January 29, 1996, and held that the rule does not require that an evidentiary hearing on the matter of attorney's fees have actually been held at the CCH on the merits before subsection (e) applies. See also Texas Workers' Compensation Commission Appeal No. 972388, decided December 18, 1997 (Unpublished) (where an award of attorney's fees, which was issued by a hearing officer after a CCH, was

determined to have become final because it was not timely appealed to the Appeals Panel); Texas Workers' Compensation Commission Appeal No. 992416, decided December 9, 1999 (Unpublished) (where an order awarding attorney's fees was signed by a different hearing officer than the one who had presided at a prior CCH regarding SIBs and the order was appealed directly to the Appeals Panel, albeit not in a timely manner). Where, as here, the Order was issued by a hearing officer following a CCH, Rule 152.3(e) applies and, as such, in order to dispute the Order awarding attorney's fees, the carrier was required to file an appeal with the Appeals Panel, in the manner prescribed in Rule 143.3.

Under Rule 143.3(a)(3), the carrier was required to file a dispute of attorney's fees not later than the 15th day after receipt of the hearing officer's Order. It is undisputed that the carrier received the hearing officer's order on February 25, 2002. Thus, the last date for the carrier to file a request for review with the Appeals Panel was March 18, 2002, not counting Saturdays, Sundays, and holidays listed in Section 662.003 of the Government Code. The carrier's appeal in this matter was filed on June 4, 2002. Having failed to timely file a request for review of the hearing officer's Order, the carrier is liable for attorney's fees in the amount of \$6,750.00 pursuant to that Order.

The hearing officer's decision and order are affirmed.

The true corporate name of the carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge