

APPEAL NO. 030293
FILED MARCH 20, 2003

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 January 13, 2003. With respect to the issue before her, the hearing officer determined that the fees awarded to the appellant (attorney) in excess of \$150.00 per hour for the 2.5 hours approved in the Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees of September 19, 2002 (Order No. 17), were unreasonable, unnecessary, and excessive. The hearing officer further determined that 1 hour of fees approved in the second Commission Order for Attorney's Fees dated September 19, 2002 (Order No. 18), were unreasonable, unnecessary, and excessive and that the carrier was not liable for 1.35 hours of fees for work completed prior to June 21, 2002, the day the carrier filed its request for a benefit review conference, disputing respondent 2's (claimant) entitlement to supplement income benefits (SIBs) for the second quarter pursuant to Section 408.064 and Texas Workers' Compensation Commission Appeal No. 011478-s, decided August 13, 2001. In her appeal, the attorney argues that the hearing officer erred in reducing her hourly rate to \$150.00 per hour, in disapproving 1 hour of the 1.5 hours requested for completing the Application for [SIBs] (TWCC-52) for the second quarter, and in determining that the carrier was not liable for the 1.35 hours of fees for work completed prior to June 21, 2002, arguing that the interpretation given to Section 408.147(c) in Appeal No. 011478-s is erroneous. The appeal file does not contain a response from the claimant or from respondent 1 (carrier). In addition, the carrier did not appeal the determination that it is liable for 2.5 hours of fees associated with Order No. 17 and 3.75 hours of fees associated with Order No. 18.

DECISION

Affirmed in part and reversed and rendered in part.

As noted above, the carrier did not appeal the hearing officer's determination that it was liable for 3.75 hours of attorney's fees approved in Order No. 18; thus, the issue of whether those fees were properly approved is not before us on appeal. The attorney argues that the hearing officer should have approved the additional 2.35 hours of fees requested. All of the 2.35 hours of fees at issue here, including the 1 hour of fees requested for completing the SIBs application, were performed by the attorney prior to the carrier's dispute of the claimant's entitlement to second quarter SIBs. As such, the hearing officer did not err in determining that the carrier is not liable for those fees. In Appeal No. 011478-s, *supra*, we determined that by its plain language, Section 408.147(c) establishes that if the prerequisites for the carrier to be liable for attorney's fees are satisfied, the carrier is "liable for reasonable and necessary attorney's fees incurred by the employee as a result of the insurance carrier's dispute. . . ." (Emphasis added.) That is, Appeal No. 011478-s determined that the carrier's liability for fees is triggered by the filing of a dispute of the quarter and that the carrier is not liable for the fees associated with work completed in relation to a SIBs quarter prior to the date of the

dispute. In her appeal, the attorney argues that the interpretation of Section 408.147(c) given in Appeal No. 011478-s is incorrect. We decline to reconsider our decision in that regard and, as such, the hearing officer did not err in disapproving the 2.35 hours of fees at issue in Order No. 18.

The question remains as to whether the hearing officer abused her discretion in reducing the attorney's hourly rate to \$150.00 per hour. We note initially, that the Commission approved an hourly rate of \$200.00 per hour in both Order No. 17 and Order No. 18. At the hearing, the attorney asked the hearing officer to give her the \$250.00 per hour she had requested. In support of her assertion that \$250.00 per hour was a reasonable attorney fee, she submitted her own affidavit and an affidavit from another attorney that represents claimants in SIBs cases. At the hearing, the carrier's attorney agreed that the \$200.00 hourly rate awarded by the Commission was a reasonable fee but argued that the \$250.00 hourly rate should not be approved. The carrier did not argue that the \$200.00 hourly rate should be reduced; nonetheless, the hearing officer determined that the hourly rate should be \$150.00. The only question before the hearing officer was whether the hourly rate should be raised to \$250.00 per hour. The hearing officer had the discretion to reject the evidence in support of the assertion that \$250.00 per hour was a reasonable fee in this case and we find no merit in the assertion that she erred in doing so. However, we believe that the hearing officer did err in reducing the hourly rate to \$150.00, in that the carrier did not ask for that relief and in granting that relief the hearing officer exceeded the scope of the issue before her, namely the resolution of the issue of whether the \$250.00 hourly rate should be approved. Accordingly, we reverse the portion of the hearing officer's decision and order stating that the carrier is liable for \$375.00 in fees (2.5 hours @ \$150.00 per hour) for Order No. 17 and render a new determination that the carrier is liable for \$500.00 (2.5 hours @ \$200.00 per hour) for Order No. 17. In addition, we reverse the determination that the carrier is liable for \$562.50 in fees (3.75 hours @ \$150.00 per hour) for Order No. 18 and render a new determination that the carrier is liable for \$750.00 in fees (3.75 hours @ \$200.00 per hour) for Order No. 18.

In her appeal, the attorney also contends that the Commission's SIBs rules are "as a matter of law unconstitutional." That issue was not raised at the hearing and a dispute of an attorney's fee order, even though related to SIBs, seems an inappropriate place to raise such a challenge. Nevertheless, we note that the Appeals Panel's jurisdiction is limited to that established in Sections 410.202 and 410.203. We are without the authority to consider the challenge to the constitutionality of the SIBs rules. Texas Workers' Compensation Commission Appeal No. 92275, decided August 11, 1992; Texas Workers' Compensation Commission Appeal No. 951542, decided October 25, 1995.

The hearing officer's determination disapproving 2.35 hours in Order No. 18 is affirmed based upon our interpretation of Section 408.147(c) as noted in Appeal No. 011478-s. The hearing officer's determination awarding an \$150.00 hourly rate for the 3.75 hours approved in Order No. 18 to be paid by the carrier is reversed and a new decision rendered that the carrier is to pay fees in the amount of \$200.00 per hour for

the 3.75 hours approved, or \$750.00. In addition the hearing officer's determination that the carrier is to pay \$375.00 in fees pursuant to Order No. 17 is reversed and a new decision rendered that the carrier is to pay fees in the amount of \$500.00 (2.5 hours @ \$200.00 per hour).

The true corporate name of the insurance carrier is **THE CONNECTICUT INDEMNITY 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:

Terri Kay Oliver
Appeals Judge

Edward Vilano
Appeals Judge