

APPEAL NO. 030301  
FILED MARCH 27, 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 (CCH) on attorney's fees was held on January 13, 2003. The hearing officer resolved the disputed issues by deciding that: (1) attorney's fees awarded in Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (Order) No. 18 that exceeded \$150.00 per hour for 2.25 hours are unreasonable, unnecessary, and excessive, and that attorney's fees for the period covered by Order No. 18 in the amount of \$337.50 are reasonable and necessary; and (2) attorney's fees awarded in Commission Order No. 19 that exceeded \$150.00 per hour for 4.70 hours are unreasonable, unnecessary, and excessive, and that attorney's fees for the period covered by Order No. 19 in the amount of \$705.00 are reasonable and necessary. The appellants (claimant and claimant's attorney) appeal the hearing officer's determinations. No response was received from the respondent (carrier).

DECISION

Reversed and rendered.

The attorney represented the claimant in obtaining supplemental income benefits (SIBs) for the seventh quarter. The dispute was apparently resolved in favor of the claimant at a benefit review conference. In Commission Order Nos. 18 and 19, the Commission approved all of the 6.95 hours requested, but at an hourly rate of \$200.00 instead of the requested hourly rate of \$250.00. The attorney appealed the reduction in the hourly rate that was requested and a CCH was held. All of the 6.95 hours requested by the attorney were approved by the hearing officer. However, the hearing officer did not approve the attorney's requested hourly rate of \$250.00, but instead approved an hourly rate of \$150.00. The attorney filed an appeal contending that the claimant appeals the hearing officer's decision that the hourly rate of \$250.00 was unreasonable and excessive. The attorney also contends that the hearing officer's reduction of the hourly rate from \$200.00 (the hourly rate approved by the Commission in Order Nos. 18 and 19) to \$150.00 was arbitrary, capricious, and an abuse of discretion.

Since this case involves a claimant's attorney's fees in a SIBs dispute, Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §152.1(f) (Rule 152.1(f)) apply. Both of those provisions speak in terms of reasonable and necessary attorney's fees and provide for payment of the attorney's fees by the carrier. Rule 152.4 regarding guidelines for legal services does not apply. Texas Workers' Compensation Commission Appeal No. 970805, decided June 18, 1997.

The standard of review in attorney's fees cases is abuse of discretion. Texas Workers' Compensation Commission Appeal No. 022337, decided October 30, 2002.

In the instant case, the hearing officer was not persuaded that an hourly rate of \$250.00 was reasonable and necessary despite the attorney's testimony and affidavit and the affidavit of another attorney in support of that hourly rate. The hearing officer's decision does not reflect that she simply applied the \$150.00 hourly rate set forth in Rule 152.4. In reaching her decision, the hearing officer noted that she concluded that an hourly rate in excess of \$150.00 for the legal services described in Commission Order Nos. 18 and 19 is excessive and unreasonable because the questions involved were neither novel nor difficult, no more than ordinary skill was required to perform the services, and the fee customarily charged in the vicinity for the same or similar services is \$150.00 per hour. In another case involving a claimant's attorney's fees in a SIBs dispute, Appeal No. 022337, *supra*, the Appeals Panel upheld a hearing officer's determination and found no abuse of discretion in awarding fees based on a \$150.00 hourly rate rather than a \$250.00 hourly rate. We do not agree with the attorney's contention that the hearing officer failed to consider the factors set forth in Section 408.221(d).

However, in a recent decision regarding a claimant's attorney's fees in a SIBs case, Texas Workers' Compensation Commission Appeal No. 030293, decided March 21, 2003, the Appeals Panel ruled that a hearing officer had the discretion to reject the evidence in support of the assertion that \$250.00 per hour was a reasonable fee, but determined that the hearing officer erred in reducing the hourly rate to \$150.00 because 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. In that case, the Commission's order had approved a \$200.00 hourly rate, and at the CCH 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 be reduced. Appeal No. 030293 rendered a decision based in part on the \$200.00 hourly rate that was approved by the Commission and not contested by the carrier. In the instant case, although notified of the CCH on the attorney's fees issue, the carrier did not appear at the CCH.

In accordance with our decision in Appeal No. 030293, we reverse the hearing officer's decision with regard to Order No. 18 and render a decision awarding the attorney \$450.00 (2.25 hours @ \$200.00 per hour), and we reverse the hearing officer's decision with regard to Order No. 19 and render a decision awarding the attorney \$940.00 (4.70 hours @ \$200.00 per hour).

With regard to the attorney's assertion that the those portions of Rule 130.102 which address the good faith criterion for SIBs entitlement are unconstitutional, we have previously noted that administrative rules are presumed to be valid, that the burden of proving invalidity is on the party asserting invalidity, and that the courts are the proper forum for deciding the validity of agency rules. Texas Workers' Compensation Commission Appeal No. 980673, decided May 18, 1998. In addition, the validity of the SIBs rule regarding the good faith criterion for SIBs entitlement is not particularly germane to the hearing officer's award of attorney's fees.

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 SYSTEM  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Roy L. Warren  
Appeals Judge