

APPEAL NO. 031360
APPEAL JULY 10, 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 April 14, 2003. With respect to the issues before him, the hearing officer determined that the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the first, second, third, and fourth quarters and that his average weekly wage (AWW) is \$888.89. The claimant appeals the portion of the hearing officer's decision that requires that the attorney fees be deducted from benefits rather than being paid by the respondent (carrier) in accordance with Section 408.147(c). In its response to the claimant's appeal, the carrier urges affirmance. The carrier did not appeal the determinations that the claimant is entitled to SIBs for the first through fourth quarters and that his AWW is \$888.89 and those determinations have, therefore, become final. Section 410.169.

DECISION

Affirmed as modified.

As noted above, this appeal is limited to the issue of whether the claimant's attorney fees for the prosecution of this SIBs dispute are to be paid out of benefits as the hearing officer found or whether they are to be paid separately by the carrier in accordance with Section 408.147(c). In the Decision section, the hearing officer stated that "since the Carrier did not challenge a determination of the [Texas Workers' Compensation Commission (Commission)] that the Claimant was entitled to [SIBs], approved attorney fees will be deducted from the amount of [SIBs] awarded for the first four quarters." In Texas Workers' Compensation Commission Appeal No. 030641-s, decided March 27, 2003, we rejected that rationale for when the carrier is liable for attorney fees in SIBs cases. Rather, in Appeal No. 030641-s, we determined that it is "expressly clear that the legislature intended, for SIBs to provide for an award of attorney fees, not payable from the SIBs benefit, for each quarter where the carrier's assessment of nonentitlement is overturned by the Commission or the Courts." That is, "[i]f a claimant seeks SIBs for a particular quarter and the carrier disputes the claimant's entitlement to that quarter and the claimant prevails at the [hearing], the claimant's attorney's fees are not deducted from the claimant's recovery." Based on Appeal No. 030641-s, the hearing officer erred in determining that the attorney fees in this SIBs case were to be paid from benefits rather than by the carrier in accordance with Section 408.147(c). As such, we modify the Decision section to strike the language stating that attorney fees are to be deducted from the claimant's SIBs and to include language that approved attorney fees are to be paid by the carrier in accordance with Section 408.147(c). The Decision section will now state:

The Claimant's [AWW] is \$888.89. The Claimant is entitled to [SIBs] for the first four quarters because of his underemployment. The amount of [SIBs] to be paid will be based on the [AWW] and the amount of wages

the Claimant earned each week of the qualifying periods, as shown in Claimant Exhibit 10. Accrued but unpaid [SIBs], plus interest, will be paid to the Claimant in a lump sum. Approved attorney fees are to be paid by the carrier in accordance with Section 408.147(c).

As so modified, the hearing officer's decision and order are affirmed.

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

**C. J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75206.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge