

APPEAL NO. 033375
FILED FEBRUARY 19, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Contested case hearings were held on July 17, 2003, and on August 13, 2003. The hearing officer decided that: (1) the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter; and (2) consistent with the parties' agreement, the claimant is entitled to second quarter SIBs. The hearing officer's decisions were not appealed and have become final. Following the hearings, the claimant's attorney submitted a request for attorney's fees based upon written justification, for services related to the dispute of first and second quarter SIBs. The hearing officer issued a Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees, on December 4, 2003, approving the total hours requested in the amount of \$4,275.00. The claimant appeals, asserting that the hearing officer erred by ordering the approved fees to be paid out of the claimant's recovery. The respondent (self-insured) did not file a response.

DECISION

Reversed and a new decision rendered that the attorney's fees are to be paid by the self-insured.

Our review of the record reveals that the Commission issued a Notice of Entitlement to [SIBs] (CS-22), finding that the claimant was entitled to first quarter SIBs. The self-insured subsequently disputed the claimant's entitlement to first and second quarter SIBs and the issues proceeded to a hearing. As indicated above, the hearing officer determined that the claimant was entitled to first quarter SIBs, and the parties agreed, at the hearing on second quarter SIBs, that the claimant was entitled to second quarter SIBs. The hearing officer's decisions were not appealed. Following the hearings, the claimant's attorney submitted a request for attorney's fees, in the amount of \$4,275.00 for the period from March 21 through August 13, 2003, for services related to the self-insured's dispute of first and second quarter SIBs. The hearing officer approved the request, on December 4, 2003, and ordered the fees be paid "only from the claimant's benefits."

Under Section 408.147(c), if a carrier disputes a Commission determination that an employee is entitled to SIBs or the amount of SIBs due and the employee prevails on any disputed issue, the carrier is liable for reasonable and necessary attorney's fees incurred as a result of the dispute. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)) similarly provides, "[an] attorney for an employee who prevails when a carrier contests a Commission determination of eligibility for [SIBs] shall be eligible to receive a reasonable and necessary attorney's fee, including expenses." In Texas Workers' Compensation Commission Appeal No. 951045, decided August 8, 1995, we held that such fees, unlike other attorney's fees under the 1989 Act, are not paid out of claimant's benefits; rather, the carrier is liable for attorney's fees over and

above its liability for SIBs. See *also* Texas Workers' Compensation Commission Appeal No. 962504, decided January 27, 1997 (where entitlement to seventh and eighth quarter SIBs was resolved through agreement of the parties following a benefit review conference). In view of the record and the applicable law, we reverse the hearing officer's order that the attorney's fees be paid from the claimant's benefits and render a new decision that the attorney's fees in the amount of \$4,275.00 are to be paid by the self-insured, pursuant to Section 408.147(c).

The Commission Order for Attorney's Fees, issued on December 4, 2003, is reversed and rendered consistent with our decision above.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge