

APPEAL NO. 041177  
FILED JULY 12, 2004

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 February 10, 2004, with the record closing on February 12, 2004. The hearing officer decided that respondent 1 (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter. The hearing officer's decision was affirmed in Texas Workers' Compensation Commission Appeal No. 040555, decided April 29, 2004. Following the hearing, the appellant (claimant's attorney) submitted a request for attorney's fees based on written justification, for services related to the dispute of 11th quarter SIBs. The hearing officer issued a Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (Order), on May 13, 2004, approving 17.80 attorney hours out of 24.80 hours requested at a rate of \$150.00 per hour out of \$200.00 per hour requested and 3.80 legal assistant hours at a rate of \$50.00 per hour for a total approved fee of \$2,860.00 out of \$5,150.00 requested. The claimant's attorney appeals, essentially asserting that the attorney's fees were reasonable and necessary. No response was filed by the claimant or by respondent 2 (carrier).

DECISION

Reversed and remanded.

As stated above, the claimant's attorney represented the claimant in a dispute with regard to 11th quarter SIBs. The hearing officer determined that the claimant was entitled to 11th quarter SIBs and that decision was affirmed in Appeal No. 040555, *supra*. The claimant's attorney subsequently submitted a request for attorney's fees based upon written justification, for services related to the dispute of 11th quarter SIBs. A copy of the Application for Attorney's Fees (TWCC-152) is attached to the appeal in this case and includes a brief written justification for the fees requested. The record indicates that the justification text was not entered into the Attorney Fee Processing System (AFPS). In her application, the claimant's attorney requested 24.80 attorney hours at a rate of \$200.00 per hour. Of these, the hearing officer approved 17.80 attorney hours at a rate of \$150.00 per hour. The claimant's attorney also requested 3.80 legal assistant hours at a rate of \$50.00 per hour, which were approved. The file indicates that there is no log text from the hearing officer entered into the AFPS explaining his decision denying the disputed attorney hours and using the \$150.00 per hour attorney's fee rate as opposed to the \$200.00 rate requested. The Order merely states that the fees "Ex Guideline/Unreasonabl."

As the claimant's attorney points out, 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. In Texas Workers' Compensation Commission Appeal No. 002523, decided December 12, 2000, we held that the \$150.00-per-hour limit of Rule 152.4(d) does not apply to SIBs cases. See *also* Texas Workers' Compensation Commission Appeal No. 030301, decided March 27, 2003, and cases cited therein (approving an hourly rate of \$200.00 per hour).

We review attorney's fees cases under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. Upon our review of the record, it is not clear whether the hearing officer considered the attorney's justification text in reaching his determination in this case. Additionally, the hearing officer provides no reasoned justification for disapproving the disputed items but merely indicates that the disputed fees "Ex Guideline/Unreasonabl." As such, we have no basis upon which to determine whether or not the hearing officer abused his discretion in disapproving those items. Texas Workers' Compensation Commission Appeal No. 960158, decided March 5, 1996; Texas Workers' Compensation Commission Appeal No. 970423, decided May 15, 1997. Accordingly, we reverse the Order as to the disapproved items and remand for the hearing officer to reconsider the 7 hours of requested fees which were denied and to determine whether all or any portion of those fees are reasonable and necessary, and to determine whether the \$200.00 hourly rate is reasonable in regard to both those requested hours and the previously approved hours. The hearing officer should provide a reasoned justification for disallowing any item he disapproves. The hearing officer may, at his discretion, hold a hearing on remand or allow the parties to submit and respond to written materials.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

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

**JOSEPH A. YURKOVICH  
1431 GREENWAY DRIVE, SUITE 450  
IRVING, TEXAS 75038.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge