

APPEAL NO. 041306
FILED JULY 23, 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 April 27, 2004. With respect to the issue before him, the hearing officer determined that attorney's fees in the amount of \$1,340.00 were reasonable and necessary and that the benefits were to be paid by the appellant (carrier) pursuant to Section 408.147(c). In its appeal, the carrier argues that the hearing officer erred in ordering the carrier to pay benefits under Section 408.147(c), arguing instead that the fees are payable out of respondent 2's (claimant) benefits. The appeal file does not contain a response from respondent 1, an attorney in the firm that represented the claimant. In addition, the claimant did not appear at the hearing or file a response to the appeal. The carrier did not appeal the determination that the total approved fee of \$1,340.00 was reasonable and necessary and that determination has, therefore, become final in accordance with Section 410.169.

DECISION

Reversed and a new decision rendered that the attorney's fees are to be paid from the claimant's benefits and that the carrier is not liable for fees in accordance with Section 408.147(c).

Section 408.147(c) provides:

If an insurance carrier disputes a [Texas Workers' Compensation] Commission (Commission)] determination that an employee is entitled to supplemental income benefits [SIBs] or the amount of [SIBs] due and the employee prevails on any disputed issue, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of the insurance carrier's dispute and for [SIBs] accrued but not paid and interest on that amount, according to Section 408.064.

The carrier argues that it is not liable for attorney's fees in this case because the Commission did not determine that the claimant is entitled to second quarter SIBs. Rather, the carrier agreed to pay SIBs voluntarily after it received a report from a required medical examination that the claimant agreed to attend at a benefit review conference, which resolved the carrier's dispute of the 15% impairment rating that had been assigned to the claimant. The carrier's argument is well taken. The common thread in our cases that have required the carrier to pay fees pursuant to Section 408.147(c) is that the Commission determined that the claimant was entitled to the SIBs being sought, either at a hearing or by approving an agreement between the parties to pay those benefits. That is, in order for the carrier to be liable for attorney's fees in a SIBs case under Section 408.147(c), there must be a Commission determination at some level of the dispute resolution process that the claimant is indeed entitled to the

benefits sought. We have determined that that requirement is established by the statutory language. In this instance, there was no determination made by the Commission at any level of the dispute resolution process that the claimant was entitled to second quarter SIBs. As a result, the carrier's obligation to pay attorney's fees pursuant to Section 408.147(c) was never triggered. The claimant's attorney and the hearing officer advanced policy arguments of why the carrier should be required to pay fees in this circumstance. While those arguments are certainly persuasive, this case simply does not fall within the framework of when the Commission can order the carrier to pay attorney's fees in SIBs cases. As such, neither the hearing officer nor the Appeals Panel has the authority to order the carrier to pay attorney's fees under 408.147(c). Rather, the approved fees must be paid out of the claimant's benefits.

The hearing officer's determination that the carrier is liable for \$1,340.00 in attorney's fees pursuant to Section 408.147(c) is reversed and a new decision rendered that those fees are to be paid out of the claimant's benefits.

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

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge