

APPEAL NO. 041837
FILED SEPTEMBER 9, 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 (CCH) was held on June 25, 2004. The hearing officer decided that she did not have jurisdiction to render a decision and order regarding an appeal of the supplemental income benefits (SIBs) attorney's fees ordered by a hearing officer on April 28, 2004, after the February 20, 2004, benefit CCH. The appellant (carrier) appealed, arguing that no evidence was submitted regarding attorney's fees prior to the June 25, 2004, CCH, and argues the cover letter accompanying the approved attorney's fee application contradicts the hearing officer's decision. The respondent (claimant's attorney) responded, arguing that the hearing officer properly applied Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3 (Rule 152.3) and that the carrier failed to timely request review of the hearing officer's order on attorney's fees.

DECISION

Affirmed.

The evidence reflects that a CCH was held on February 20, 2004, and a hearing officer determined that the claimant is entitled to SIBs for the first, second, third, and fourth quarters. Following that CCH by order dated April 28, 2004, attorney's fees in the amount of \$11,728.28 were approved by the hearing officer that presided at the February 20, 2004, CCH. The carrier then requested a CCH (which was held June 25, 2004) regarding its dispute of the attorney's fees order. The carrier now appeals, following the hearing officer's determination that she lacked jurisdiction to render a decision and order regarding the dispute of attorney's fees.

Rule 152.3 governs the process for disputing an award of attorney's fees. Rule 152.3(d) provides, in part, that "[e]xcept as provided in subsection (e) of this section, an attorney, claimant, or carrier who contests the fee fixed and approved by the [Texas Workers' Compensation Commission (Commission)] shall request a benefit [CCH]." Rule 152.3(e) provides that "[a]n attorney, claimant, or carrier, who contests the fee ordered by a hearing officer after a benefit [CCH] shall request review by the appeals panel pursuant to the provisions of [Rule] 143.3 of this title (relating to Requesting the Appeals Panel to review the Decision of the Hearing Officer)." The carrier contends that the hearing officer incorrectly interpreted Rule 152.3(e) stating that prior to the June 25, 2004, CCH no evidence was submitted to the hearing officer regarding attorney's fees. We addressed a similar argument in Texas Workers' Compensation Commission Appeal No. 952120, decided January 29, 1996, and held that the rule does not require that an evidentiary hearing on the matter of attorney's fees have actually been held at the CCH on the merits before subsection (e) applies. See *also* Texas Workers' Compensation Commission Appeal No. 972388, decided December 18, 1997 (where an award of attorney's fees, which was issued by a hearing officer after a CCH, was

determined to have become final because it was not timely appealed to the Appeals Panel); Texas Workers' Compensation Commission Appeal No. 992416, decided December 9, 1999 (where an order awarding attorney's fees was signed by a different hearing officer than the one who had presided at a prior CCH regarding SIBs and the order was appealed directly to the Appeals Panel, albeit not in a timely manner). Where, as here, the Order was issued by a hearing officer following a CCH, Rule 152.3(e) applies and, as such, in order to dispute the Order awarding attorney's fees, the carrier was required to file an appeal with the Appeals Panel, in the manner prescribed in Rule 143.3.

The carrier contends that the cover letter accompanying the approved attorney's fees application contradicts the hearing officer's decision. The carrier's attorney has cited no authority for its contention that the Commission is bound by instructions on a form as opposed to duly promulgated administrative rules. We have before declined to vary the duly promulgated rules of the Commission concerning appeals of attorney's fees orders by informal procedures outside the rules. See Texas Workers' Compensation Commission Appeal No. 981435, decided August 3, 1998.

Under Rule 143.3(a)(3), the carrier was required to file a dispute of attorney's fees not later than the 15th day after receipt of the hearing officer's Order. The proper way to appeal the order was not to request a CCH but to file a timely request for review, which was not done in this case. Thus, the hearing officer properly determined that she did not have jurisdiction over the disputed attorney's fees. Having failed to timely file a request for review of the hearing officer's Order, the carrier is liable for attorney's fees in the amount of \$11,728.28 pursuant to that Order.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for United Pacific Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge