

APPEAL NO. 043002
FILED JANUARY 18, 2005

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 May 13, 2004. The hearing officer resolved the disputed issue by deciding that the decedent sustained a fatal injury in the course and scope of his employment on _____. The legal beneficiaries of the decedent were undisputed. The respondent (claimant beneficiaries) were represented by (Mr. A) at the CCH held to determine whether the decedent was in the course and scope of employment on _____, when he sustained fatal injuries in a motor vehicle accident. Mr. A subsequently requested attorney's fees in the amount of \$28,420.50 and further requested burial benefits in the amount of \$6,000.00 be paid to the guardian of the claimant beneficiaries. On October 28, 2004, the hearing officer signed an order granting attorney's fees to Mr. A in the amount requested as well as the payment of burial benefits as requested. The appellant (carrier) appealed the award of attorney's fees and burial benefits, arguing that the hearing officer was without jurisdiction to make such an award; that even if jurisdiction was proper the amount awarded was in error; that it is not clear how, if at all, the lump sum award was discounted to present value; and requested reimbursement of the attorney fees paid to the beneficiaries attorney as ordered by the hearing officer. The carrier further contends that the statutory burial benefits was not a matter related to attorney fees and should not have been included in the order. The appeal file does not contain a response from the claimant beneficiaries or Mr. A.

DECISION

The hearing officer's order awarding Mr. A attorney fees in the amount of \$28,420.50 is vacated.

The carrier contends that the hearing officer was without jurisdiction to issue an order awarding attorney's fees because the beneficiaries attorney, Mr. A, failed to submit a Application for Attorney's Fees (TWCC-152). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3 (Rule 152.3) provides that to claim a fee, an attorney representing any part shall submit Form TWCC-152, with time, hourly rate, and expenses itemized separately for the attorney and for any legal assistant. The rule further provides that additional justification must be attached to the application form for any fee which exceeds the guideline and that the Texas Workers' Compensation Commission (Commission) may also require additional justification for fees which do not exceed the guideline. Section 410.168(d) provides that the hearing officer shall issue a separate written decision regarding attorney's fees and any matter related to attorney's fees. The fact that Mr. A failed to request attorney fees utilizing the format required by the rules does not deprive the hearing officer of jurisdiction in entering an award of attorney fees.

In his request for attorney fees, Mr. A stated he “has expended many hours in preparing this claim for submission to the Commission as well as the hearing itself.” Mr. A further went on to state that “[t]he Commission is familiar with the issues presented, the hearings held, the other services rendered in this cause by Claimant’s counsel.” Mr. A contends in his request for attorney’s fees that the “claimants” entered into an agreement to pay, subject to Commission approval, 25% of all income benefits paid or payable to the claimant beneficiaries, referencing an attached “contract of employment.”

Rule 152.3(b) provides in part that if the application for attorney fees is for actual time and expenses which are reasonable given the circumstances of the specific claim and are equal to or less than those allowed by the guideline established in Rule 152.4 the application may be approved and if approved, the Commission shall issue an order for payment. The rule further provides that the Commission shall deny any portion of the fee which exceeds the guidelines and which is not adequately justified. Rule 152.3(c) provides that the aggregate attorney fee for representing a claimant shall not exceed 25% recovery. The attached exhibit to the request for attorney fee provides that “the attorney’s fee in this case will be governed by and be subject to the applicable provisions of the Worker’s Compensation laws of the State of Texas, and such fees shall not exceed twenty-five percent (25%).”

It was error for the hearing officer to approve the amount of attorney fees requested by Mr. A. In his request for attorney fees, Mr. A failed to specify the hourly rate for legal services and failed to provide any justification for the amount of fees requested. No specific information was provided for the amount of time spent in the preparation and representation of his clients. The carrier correctly points out in its appeal that Section 408.221 provides that an attorney’s fee paid to claimant’s counsel is based on the attorney’s time and expenses according to written evidence presented to the Commission or court.

Rule 152.1(b) provides that an attorney shall not receive an amount greater than the fee approved by the Commission, notwithstanding any agreements between the parties, including retainer fee agreements. There is no evidence in the record to support the award of attorney fees to Mr. A nor is there any indication that the hearing officer considered the circumstances of the specific claim. Therefore, we vacate the award of attorney fees entered by the hearing officer to Mr. A in the amount of \$28,420.50.

Mr. A may submit a new request for attorney fees in the form and manner prescribed by the applicable statutes and Commission rules. If Mr. A has been paid the attorney fees awarded, or any portion thereof, by the hearing officer’s Order dated October 28, 2004, he is ordered to reimburse the carrier. See Rule 152.3(g)(h).

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

**CT CORPORATION SYSTEM
350 NORTH ST PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge