

APPEAL NO. 050381  
FILED APRIL 11, 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 July 26, 2004. The hearing officer resolved the disputed issue by deciding that respondent 1 (claimant) is entitled to supplemental income benefits (SIBs) for the eighth quarter. The hearing officer's decision was affirmed in Texas Workers' Compensation Commission Appeal No. 042089, decided October 15, 2004. Following the hearing, the appellant (claimant's attorney) submitted a request for attorney's fees for services related to the dispute of eighth quarter SIBs. A different hearing officer issued a Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (order), on February 2, 2005, approving 4.0 of the 10.25 hours requested for attorney's fees at the rate of \$150.00 per hour for a total of \$600.00 and 1.0 hour of the 1.0 hour requested for legal assistant time at the rate of \$50.00 per hour for a total of \$50.00, for a total approved fee of \$650.00 of the \$1,587.50 requested. The claimant's attorney appeals, essentially asserting that the attorney's fees requested were reasonable and necessary. No response was filed by the claimant or respondent 2 (carrier).

DECISION

Reversed and remanded.

As stated above, the claimant's attorney represented the claimant in a dispute with regard to SIBs for the eighth quarter. The hearing officer determined that the claimant was entitled to eighth quarter SIBs and that decision was affirmed in Appeal No. 042089, *supra*. The claimant's attorney subsequently submitted a request for attorney's fees for services related to the eighth quarter of SIBs. At the underlying CCH regarding the dispute of SIBs for the eighth quarter, both the attorney for the claimant and the attorney for the carrier stated they would rely on written justification. The Attorney Fee Processing System (AFPS) indicates that justification text was provided by the attorney for the fees requested. However, the justification text is irretrievable from the AFPS. There is no indication that the claimant's attorney provided justification in any other manner than through the AFPS.

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 for the 6.25 hours requested under the heading Formal Resolution: Review by Appeals Panel. 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.

We review attorney's fees cases under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The attorney's justification text was not available to the hearing officer in the computerized system. Because the evidence available to the hearing officer did not include the attorney's justification text, the evidence available on appeal shows the hearing officer was unable to review all of the evidence, as required, to make a decision regarding the fees that are the subject of this appeal. Accordingly, we reverse the Order as to the disapproved items and remand for the hearing officer to reconsider the 6.25 hours of requested fees which were denied and to determine whether all or any portion of those fees are reasonable and necessary. 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 **TWIN CITY FIRE 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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge