

APPEAL NO. 052023
FILED OCTOBER 27, 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 March 15, 2004. The hearing officer resolved the disputed issue by deciding that the respondent 1 (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter. A CCH was held on July 5, 2004. At that CCH, the hearing officer resolved the disputed issues by deciding that the claimant is entitled to SIBs for the second quarter but is not entitled to SIBs for the first, third, seventh, or eighth quarters.

On August 23, 2005, the hearing officer issued a Texas Workers' Compensation Commission (now known as the Texas Department of Insurance, Division of Workers' Compensation) Order for Attorney's Fees (Order) covering services for the period September 10, 2002, through July 16, 2004, approving 30.75 hours for the attorney's time at the rate of \$150.00 per hour and 3.50 hours for a legal assistant's time at the rate of \$50.00 per hour for a total of \$4,787.50. The Order provides that the fee is to be paid pursuant to Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The appellant (carrier) appeals the Order, contending that the hearing officer abused his discretion by ordering the carrier to pay attorney's fees that were not related to the second quarter SIBs dispute. Respondent 1 (attorney) filed an untimely response and it will not be considered. The appeal file does not contain a response from the claimant.

DECISION

Reversed and remanded.

Section 408.147(c) and Rule 152.1(f) provide essentially that a carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of a carrier's dispute of SIBs entitlement when the employee prevails. Those fees are paid by the carrier only when it disputes SIBs and loses. Appeals Panel Decision (APD) 970879 decided June 25, 1997, and cases cited in that case.

The Order approves attorney's fees for services performed from September 10, 2002, through July 16, 2004. It approves "Communications" entitled receive/review documents, office conferences, telephone conferences, and review file. The Order also approves time for preparation and attendance at proceedings of various benefit review conferences and CCHs.

Section 408.147(c) reads:

- (c) If an insurance carrier disputes a 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. Attorney's fees awarded under this subsection are not subject to Sections 408.221(b), (f), and (i).

Rule 152.1(f) reads:

- (f) An attorney for an employee who prevails when a carrier contests a Commission determination of eligibility for [SIBs] shall be eligible to receive a reasonable and necessary attorney's fee, including expenses. This fee is payable by the carrier, not out of the employee's benefits and the fee shall not be limited to a maximum of 25% of the employee's recovery. All provisions of these rules, except § 152.4 of this title (relating to Guidelines for Legal Services Provided to Claimant's and Carriers), apply.

The carrier appears to concede that it would be liable for attorney's fees for services performed for the second quarter where the claimant prevailed but not for the first, third, sixth, seventh, and eighth quarters where the carrier prevailed. We are not able to determine from the record before us which of the attorney's fees are attributable for services performed for the second quarter and which for services performed for the other quarters disputed within the service period covered by the Order. When the adjudication of the disputed SIBs quarter results in entitlement to one or more quarters previously disputed by the carrier and nonentitlement to one or more quarters, the hearing officer entering the order for attorney's fees must allocate the fees amongst the different quarters. See APD 970879 *supra*.

Accordingly, we reverse the Order and remand for a CCH at which the parties may present evidence as to which fees are allocable to which quarter so that the hearing officer may approve fees allocable to the second quarter only.

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 Division pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

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

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge