

APPEAL NO. 052419
FILED DECEMBER 21, 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 June 15, 2005, with (hearing officer 1) presiding as hearing officer. Hearing officer 1 resolved the disputed issue by deciding that the respondent 1 (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th and 12th quarters, but is entitled to SIBs for the 13th and 14th quarters. On September 23, 2005, (hearing officer 2) issued a "Commission Order for Attorney's Fees" granting the 25.40 hours requested for the two attorneys and legal assistant who worked on the case but reduced the \$200.00/hour rate requested to \$150.00/hour. The attorney appealed, arguing that the hearing officer abused his discretion in reducing the fees because he provided no explanation as to why he denied attorney fees at the rate of \$200/hour. The appeal file did not contain a response from either the claimant or respondent 2 (carrier).

DECISION

Reversed and remanded.

The claimant's attorney represented the claimant with regard to SIBs for the 11th, 12th, 13th, and 14th quarters. Hearing officer 1 determined that the claimant was entitled to SIBs for the 13th and 14th quarters but not the 11th and 12th quarters. The records reflect that the carrier appealed the determination that the claimant was entitled to SIBs for the 13th and 14th quarters but the hearing officer's determination became the final decision of the Appeals Panel. The claimant's attorney subsequently submitted attorney's fees related to what appears to be the 11th through the 14th SIBs quarters. We note that we have previously determined that where, as here, the adjudication of SIBs dispute has resulted in a determination of entitlement to some quarters and nonentitlement to other quarters, the hearing officer entering the order on attorney's fees must allocate the fees amongst the different quarters in that the carrier is only liable for the portion of the fees attributable to the SIBs quarters to which it disputed the claimant's entitlement and on which the claimant later prevailed. Appeals Panel Decision (APD) 971268, decided August 11, 1997; APD 971019, decided July 15, 1997.

Since this case involves a claimant's attorney's fees in a SIBs dispute, Section 408.147(c) and 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. APD 970805, decided June 18, 1997. The Attorney Fee Processing System indicates that justification text was provided by the attorney for the fees requested. However, no explanation was provided by the hearing officer for denial of the rate requested for the attorney fees awarded. We agree with the attorney that the hearing officer abused his discretion by reducing the hourly rate requested without explanation. We reverse the Order and remand the attorney's fees matter to the

hearing officer for the hearing officer to consider the attorney's justification text and the factors set forth in Section 408.221(d) in determining whether the \$200.00 hourly rate requested should be approved.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge