

APPEAL NO. 052569
FILED JANUARY 18, 2006

This appeal arises pursuant to the Texas Worker's Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 20, 2004. The issues at that CCH were entitlement to supplemental income benefits (SIBs) for the fourth and fifth quarters and carrier waiver to contest entitlement to SIBs by failing to timely request a benefit review conference (BRC). The claimant prevailed on all three issues. In a Commission Order for Attorney's Fees (order) sequence 25, dated October 28, 2005, covering services for the period from April 1, 2004, through January 31, 2005, the hearing officer approved 27.75 hours of the requested 27.75 hours of attorney's fees¹ at a \$150.00/hour.

The appellant claimant's attorney (attorney), appealed, contending that the hearing officer erred in reducing the requested rate of \$200.00 an hour attorney time to \$150.00/hour and cited Appeals Panel decisions where the \$200.00 hourly rate has been upheld.

DECISION

Reversed and remanded.

The attorney submitted an Application for Attorney's Fees (TWCC-152) with a justification text which sets out some of the work which was required for this particular case and concluded that she has been practicing "workers' comp law" for a number of years and was "board certified in Texas Workers' Compensation Law." The file contains a copy of the Attorney Fee Processing System justification text. The hearing officer gives no reason why he reduced the requested \$200.00 an hour to \$150.00 an hour.

We review attorney's fees cases under an abuse-of-discretion standard. Appeals Panel Decision (APD) 050331, decided March 31, 2005. The attorney, in her appeal, asserts that the Texas Department of Insurance, Division of Workers' Compensation (Division) has in "numerous decisions" held that \$200.00 an hour in a SIBs attorney's fee case to be reasonable and necessary citing Appeals Panel decisions.

Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)) provide that 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 self-insured, not out of the employee's benefits, and the fee shall not be limited to a maximum of 25% of the employee's recovery. Rule 152.4 regarding guidelines for legal services does not apply. APD 970906, decided June 30, 1997.

¹The order also approved a requested 10.75 hours of legal assistant fees at \$50.00 an hour which has not been appealed and will not be addressed further.

In view of the justification text provided by the attorney in support of her request and the lack of any justification or reason given by the hearing officer in reducing the requested \$200.00 an hour fee to \$150.00 an hour, we believe the hearing officer abused his discretion. We reverse the hearing officer's order and remand the case 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 requested \$200.00 hourly rate should be approved, as being reasonable and necessary.

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 **VALIANT INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251-2237.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge