

APPEAL NO. 052576
FILED JANUARY 23, 2006

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 November 14, 2003. The issues at the CCH were entitlement to supplemental income benefits (SIBs) for the second, third, and fourth quarters. The hearing officer determined that respondent 1 (claimant) was entitled to SIBs for the third and fourth quarters but not the second quarter. In an Application for Attorney's Fees (TWCC-152) the appellant (attorney) sought 12.5 hours of attorney's fees at \$200.00 an hour (and also 2.75 hours of legal assistant time which was not appealed and is not at issue) covering services for the period of October 1 through November 30, 2003. In a Commission Order for Attorney's Fees (Order) dated October 28, 2005, for sequence 25, the hearing officer approved 12.50 hours of attorney fees at \$150.00 an hour rather than the \$200.00 per hour requested rate. The file does not contain a response from the claimant or respondent 2 (self-insured).

The attorney appealed, asserting that the hearing officer erred in cutting the requested rate of \$200.00 an hour attorney time, asserting that she had submitted written justification and that the hourly rate of \$200.00 an hour had been upheld in other cases as reasonable.

In the attorney's written justification text in the Attorney Fee Processing System the attorney recites the work that she did in this particular case, and that the requested attorney fee reflects only work done for the two quarters in which the claimant prevailed. The justification text submitted with the appeal also recites that the attorney has been "practicing worker's comp law" for a number of years and is "board certified in Texas Workers' Compensation law."

We review attorney's fees cases under an abuse-of-discretion standard. Appeals Panel Decision (APD) 050331, decided March 31, 2005. 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 970805, decided June 18, 1997.

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 reverse the hearing officer's decision and remand the case for the hearing officer to consider the attorney's justification text and the factors listed 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 Texas Department of Insurance Division of Workers' Compensation 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 **(a certified self-insured)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS ZIP CODE.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge