

APPEAL NO. 052639
FILED JANUARY 27, 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 was held on May 27, 2004, (hearing officer 1) presiding as hearing officer. Hearing officer 1 resolved the disputed issues by deciding that respondent 1 (claimant) was not entitled to supplemental income benefits (SIBs) for the first and second quarters, but was entitled to SIBs for the third quarter. In a Commission Order for Attorney's Fees (Order) Sequence No. 26 dated November 4, 2005, (hearing officer 2) awarded 35.75 hours requested attorney's fees (and 6.25 hours legal assistant fees which have not been appealed) but reduced the \$200.00/hour rate requested to \$150.00/hour. The attorney appealed, contending that hearing officer 2 had abused his discretion in reducing the requested hourly fee "without explaining his rationale and/or considering the justification text submitted by [the attorney]."

DECISION

Reversed and remanded.

The claimant's attorney represented the claimant with regards to SIBs for the first, second and third quarters. Hearing officer 1 determined that the claimant was entitled to SIBs for the third quarter, but not the first and second quarters. Respondent 2 (carrier) appealed the determination for the third quarter SIBs, the claimant responded and the Appeals Panel in Appeals Panel Decision (APD) 041458, decided November 11, 2004, affirmed hearing officer 1's decision. The claimant's attorney subsequently filed an Application for Attorney's Fees (TWCC-152) Sequence No. 26, for 35.75 hours attorney fees (and 6.25 hours legal assistant fees not appealed) for dates of service from January 1 through August 31, 2004. The claimant's attorney in the Attorney's Fee Processing System (AFPS) recites the work done on the case, the fact that the carrier had appealed and the attorney fee "reflects work done for 3g. Which Claimant won." The claimant's attorney also sets out that she has practiced "workers' 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. 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 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. Rule 152.4 regarding guidelines for legal services does not apply per Rule 152.1(f). The AFPS indicates that a justification text was provided by the attorney for the fees requested. No explanation or rationale was provided by hearing officer 2 for denial of the rate requested.

We agree that hearing officer 2 abused his discretion by reducing the hourly rate requested without explanation. Consequently, we reverse the Order, Sequence No. 26, 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 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