

APPEAL NO. 060118
FILED MARCH 16, 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 September 20, 2005 (hearing officer 1) presiding as hearing officer. Hearing officer 1 resolved the disputed issue by deciding that respondent 1 (claimant) was entitled supplemental income benefits (SIBs) for the sixth quarter. In a Commission Order for Attorney's Fees (Order) dated January 3, 2006, (hearing officer 2) awarded 13.50 hours requested attorney's fees to the claimant's attorney (attorney) but reduced the requested \$200.00 an hour rate to \$150.00 an hour. The attorney appealed, contending that hearing officer 2 had abused his discretion by only approving attorney's fees in the amount of "\$150.00/hr, as opposed to the \$200/hr requested." The carrier responded, contending that 28 TEX. ADMIN. CODE § 152.4 (Rule 152.4) is applicable and mandatorily sets the "maximum hourly rate for attorneys of \$150.00 per hour." The carrier urges affirmance of the Order. There was no response from the claimant.

DECISION

Reversed and a new decision rendered.

The claimant's attorney represented the claimant with regards to SIBs for the sixth quarter for which the claimant prevailed. The carrier appealed and the Texas Department of Insurance, Division of Workers' Compensation (Division) by letter dated December 19, 2005, advised the parties that hearing officer 1's decision is the decision of the Appeals Panel. The Attorney Fee Processing System (AFPS) indicates that the attorney's justification text cites Section 408.147(c) and Rule 152.1(f), that the claimant had prevailed in a SIBs case and that the "200.00/hr attorney [fee] is comparable to the fair market value charged [*sic* charged] and received by other legal services providers for similar types of work" also citing the attorney's firm expertise. The AFPS review log text has an entry "[n]o evidence that claimant agreed to a 200 hourly fee for SIBs cases."

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 Rule 152.1(f) provide that an attorney for an employee who prevails when a carrier contests a Division 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. APD 970805, decided June 18, 1997.

Hearing officer 2, in reducing the hourly fee is apparently applying the language of Section 408.147(c) which states that the "Carrier is liable for reasonable and necessary attorney's fees incurred by the employee" as a result of the carrier's dispute.

However, we believe that hearing officer 2 applied the wrong standard. There is no evidence what fee the claimant may, or may not, have agreed to and the \$150.00 limit imposed by hearing officer 2 appears to be based on the fee guidelines established in Rule 152.4(d)(A), which Rule 152.1(f) clearly states does not apply. The standard that should have been used was whether the attorney's fees requested were "reasonable and necessary." See Section 408.147(c) and Rule 152.1(f). We reject the carrier's contention that there is no authority to exceed the guidelines established in Rule 152.4(d).

In view of the justification text provided by the attorney in support of his request and a lack of any evidence that the \$200.00 an hour rate was not reasonable and necessary, we reverse the hearing officer 2's decision and render a new decision awarding the claimant's attorney 13.50 hours of requested fees at \$200.00 an hour for total fee of \$2,700.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL OLIVER, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge