

APPEAL NO. 060354
FILED MAY 18, 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 October 26, 2005, (hearing officer 1) presiding as hearing officer. Hearing officer 1 determined that the appellant (claimant/beneficiary) (on behalf of the estate of the deceased) is entitled to supplemental income benefits (SIBs) for the 1st through 12th quarters. The respondent's (self-insured) appealed the hearing officer's decision and the claimant/beneficiary through (attorney) filed a response. Hearing officer 1's determination became the final decision of the Appeals Panel. The attorney filed an Application for Attorney's Fees (TWCC-152) requesting 33.75 hours of "A1" (attorney 1) time and 5.75 hours of "A2" (attorney 2) time for attorney services at \$200 an hour and .60 hours of legal assistant time at \$50.00 an hour for a total requested fees in the amount of \$7,930.00 for services rendered from June 29 to December 27, 2005.

Attached to the attorney's "Request for Appeal" is a "Commission Order for Attorney's Fees" (Order) dated January 27, 2006, where (hearing officer 2) approved 26.55 hours of attorney 1's time, and 2.00 hours of attorney 2's time at \$200.00 an hour and .60 hours of legal assistant time at \$50.00 an hour for a total approved fee of \$5740.00. The attorney represented the claimant/beneficiary at the CCH and on the appeal on the issue of entitlement to the 1st through 12th quarters of SIBs. The Order reflects that the fees are to be paid pursuant to Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The attorney appealed the Order, contending that hearing officer 2 "erred by labeling the disputed attorney's fees in the amount of \$2190.00 as exceeding the guidelines and unreasonable" and as such was an abuse of discretion. The carrier in a response, timely as a response but untimely as an appeal, asserts it "has received no adequate justification for claimant's attorney's request for excessive attorney fee" and that the \$150.00 per hour maximum allowable fee in Rule 152.4 still applies. We will not consider the carrier's contention regarding reduction of the hourly rate as that matter was not timely appealed. The attorney submitted a reply to the carrier's response insofar as it is considered an appeal of the hourly rate. As indicated we will not consider the carrier's contention regarding reduction of the hourly rate.

DECISION

Reversed and remanded.

In dispute is 7.20 hours of attorney 1's time and 3.75 hours of attorney 2's time for a total \$2,190.00 attorney fees. The reason given on the Order was "Ex Guidelines/Unreasonabl." The Attorney Fee Processing System (AFPS) indicates no justification was submitted and hearing officer 2's justification text states: "NO JUSTIFICATION TEXT PROVIDED FOR EXCEEDING GUIDELINES." The attorney in her appeal states that the "Claimant's attorney supported its request for attorney's fees

in the amount of \$7,930.00 with a justification letter submitted with the application.” In retrieving the Application for [SIBs] (TWCC-52) dated January 12, 2006, from the claims file there is a letter dated January 12, 2006, entitled “Justification For Request For Attorney Fees-SIBs” which notes that the requested fees concerned entitlement to SIBs and that “TWCC Guidelines Do Not Apply.” The letter cites Section 408.147(c) and Rule 152.1, addresses SIBs claims in general and the attorney’s “special knowledge.”

The standard of review in an attorney’s fees case is abuse of discretion. Appeals Panel Decision (APD) 022337, decided October 30, 2002. Since this case involves a claimant’s attorney’s fees in a SIBs dispute in which the claimant prevailed, Section 408.147(c) and Rule 152.1(f) apply. Both of these 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(d) provides for a maximum hourly rate for legal services by an attorney of \$150.00; however, pursuant to Rule 152.1(f), Rule 152.4 regarding guidelines for legal services does not apply to a claimant’s attorney’s fees where the claimant prevails in the SIBs dispute. APD 970805, decided June 18, 1997.

In this case hearing officer 2 apparently did not consider the justification letter which was attached to the TWCC-52 form and applied the standards set out in Rule 152.4(d). In doing so we hold that hearing officer 2 abused her discretion by reducing the requested attorney’s fees without other justification than saying they exceeded guidelines.

We reverse the Order and remand the attorney’s fee matter to the hearing officer for the hearing officer to consider the attorney’s justification letter and the factors set forth in Section 408.221(d) in determining whether the attorney’s fees were reasonable and necessary. The hearing officer should provide a reasoned justification for disallowing any hours disapproved.

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 **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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge