

APPEAL NO. 060712
FILED JUNE 19, 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 January 23, 2006. With regard to the only issue before him the hearing officer determined that the claimant was not entitled to supplemental income benefits (SIBs) for the third quarter. Nonetheless in a "Commission [Texas Department of Insurance, Division of Workers' Compensation (Division)] Order [order] for Attorney's Fees" sequence 50, dated March 22, 2006, the hearing officer approved 18.24 hours of requested attorney fees and 2 hours of legal assistant fees in the amount of \$2,836.00 to be paid to the attorney for an employee pursuant to Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)) with the order being "issued in accordance with the guidelines set forth under [Division] Rule 152.4." The order in sequence 50 covers dates of service of September 27, 2005, to February 6, 2006.

The carrier appeals, contending that the order directs that "the attorney fee was ordered to be paid directly by the carrier and not from the claimant's benefits pursuant to Rule 152.1(f) which is in error as the rule is to be used only when the claimant's attorney [*sic* claimant] prevails when a carrier contests [SIBs]." The carrier represents that the claimant has not prevailed in any of the disputed quarters. The file does not contain a response from either the claimant or claimant's attorney.

DECISION

The hearing officer's order awarding the claimant's attorney's fees in the amount of \$2,836.00 is reversed and a decision rendered vacating the order.

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. All provisions of these rules, except Section 152.4 of this title (relating to Guidelines for legal Services Provided to Claimant's and Carrier's), apply.

The hearing officer's decision and order in the file confirm that the hearing officer determined that the claimant was not entitled to SIBs for the third quarter. Division records indicate that the third quarter SIBs decision was not appealed. There is no other evidence that the claimant may have prevailed in any other quarter. In that the employee/claimant did not prevail in this SIBs case, the attorney is not entitled to an attorney's fee under Section 408.147(c) and Rule 152.1(f).

We reverse the order for attorney's fees and vacate the award of attorney's fees entered by the hearing officer to the claimant's attorney in the amount of \$2,836.00. If

the claimant's attorney has been paid the attorney fees awarded, or any portion thereof, by the order dated March 22, 2006, the attorney is ordered to reimburse the carrier. See Rule 152.3(g) and (h).

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge