

APPEAL NO. 062582
FILED FEBRUARY 13, 2007

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 3, 2006. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 9th quarter, July 12 through October 10, 2006. Neither party appealed the hearing officer's determination regarding SIBs entitlement for the 9th quarter.

In a Texas Department of Insurance, Division of Workers' Compensation (Division) Order For Attorney's Fees dated November 22, 2006 (Sequence 29), \$5,835.00 in attorney's fees were ordered to be paid to the law firm of (law firm) pursuant to Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)) for dates of service from July 5 through October 30, 2006. In an additional Division Order for Attorney's Fees dated November 22, 2006 (Sequence 30), \$6,106.44 in attorney's fees were ordered to be paid to the law firm of (law firm) pursuant to Section 408.147(c) and Rule 152.1(f), also for dates of service from July 5 through October 30, 2006. The appellant (self-insured) has appealed, arguing that with two exceptions, the fees ordered in Sequences 29 and 30 were identical. The claimant responded, acknowledging that Sequences 29 and 30 are in large part duplicative and "rescinds any entitlement to fee order [for Sequence 29] and requests that fee order [for Sequence 30] be left undisturbed."

DECISION

We reverse the attorney's fees order in Sequence 29 and render a decision vacating that order. We affirm the attorney's fees order in Sequence 30.

We review attorney's fees cases under an abuse-of-discretion standard. 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 per Rule 152.1(f).

A Division Order For Attorney's Fees dated November 22, 2006 (Sequence 29), ordered \$5,835.00 in attorney's fees to be paid to the law firm of (law firm). A second Division order for Attorney's Fees dated November 22, 2006 (Sequence 30), ordered \$6,106.44. A review of the Orders for Attorney's Fees in Sequences 29 and 30 reflect that except for travel expenses approved in the amount of \$135.72 for a benefit review conference on August 14, 2006, and travel expenses approved in the amount of \$135.72 for the CCH, the entries requested and approved are identical.

The carrier argues, without specificity, that both Sequences 29 and 30 order fees for dates of service not related to the pursuit of the 9th quarter SIBs which is in dispute. We find this contention to be without merit. The carrier also argues that both Sequences 29 and 30 order travel for (attorney 1) to attend the CCH on October 3, 2006, when Sequence 28 also orders travel time for (attorney 2) to attend this CCH on October 2, 2006. The hearing officer's decision and order reflects that the CCH was held on October 3, 2006, and that attorney 1 represented the claimant. We cannot say that there was an abuse of discretion in approving the requested travel time and expenses for attorney 1 to attend the CCH. Sequence 28 is not currently before us.

We affirm the attorney's fees order in Sequence 30. Because all of the attorney's fees ordered in Sequence 29 are duplicated in Sequence 30, those attorney's fees should not have been ordered to be paid pursuant to Section 408.147(c) and Rule 152.1(f), thereby making the carrier liable for those attorney fees. We reverse the attorney's fees order in Sequence 29 and render a decision vacating the attorney's fees order in Sequence 29.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MF
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Carisa Space Beam
Appeals Judge

Thomas A. Knapp
Appeals Judge