

APPEAL NO. 070712  
FILED JUNE 12, 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 February 2, 2007. The hearing officer resolved the disputed issue by deciding that Respondent 1 (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. Records of the Texas Department of Insurance, Division of Workers' Compensation, (Division) reflect that the hearing officer's decision was appealed but that the hearing officer's decision became final on May 3, 2007.

A Division Order for Attorney's Fees, Sequence 30 dated March 22, 2007, approved \$2,000.00 of the requested \$3,125.00 attorney's fees requested by the appellant (attorney). The attorney had represented the claimant at the benefit review conference (BRC), CCH and on appeal on the disputed issue of entitlement to SIBs for the fourth quarter. 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 appeals certain portions of the Order, contending that the requested fees were reasonable and necessary. No response was received from Respondent 2 (carrier) or from the claimant.

DECISION

Reversed and a new decision rendered.

We review attorney's fees cases under an abuse-of-discretion standard. Appeals Panel Decision 050331, decided March 31, 2005. The attorney appeals the following items which were denied:

12-07-06: 2:00 hours travel time from (city 1) to (city 2) and .50 hrs attendance for a BRC. The travel time was denied for "Multiple Reasons," the attendance time was denied for "Ex Guidelines/Unreasonabl."

02-02-07: 2:00 hours travel time from (city 1) to (city 2) and 1:00 hr attendance at the CCH. The travel time was denied for "Multiple Reasons," the attendance time was denied for "Ex Guidelines/Unreasonabl."

03-19-07: 2:00 hours time to draft and file the claimant's response to the carrier's appeal which was denied as "Ex Guidelines/Unreasonabl."

The dates claimed for travel time and attendance at the BRC and CCH correspond with the dates listed in the hearing officer's Decision and Order. The requested time to prepare the claimant's response to the carriers appeal came within the time allowed for filing a response. The Order lists no other reason for reduction of the claimed fees

other than as listed. The attorney, in his appeal, lists some of his qualifications and contends the fees claimed were reasonable and necessary.

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 fees shall not be limited to a maximum of 25% of the employee's recovery. Pursuant to Rule 152.1(f), Rule 152.4 relating to guidelines for legal services does not apply to the legal services under consideration. See APD 970805, decided June 18, 1997. The attorney, in his appeal, further contends that the requested hours were not only reasonable and necessary but "were within the necessary guidelines as set forth in Rule 152.4."

We reverse that portion of the Order that disapproves attorney's fees for travel time and attendance at the December 7, 2006, BRC and the February 2, 2007, CCH and the drafting and filing of a response to the carrier's appeal on March 19, 2007. We render a new decision that the disputed items are approved for an additional 7.5 hours of attorney time at \$150.00 per hour for a total approved fee of \$3,125.00.

According to the information provided by the carrier at the CCH, the true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE 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.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge