

APPEAL NO. 071432
FILED SEPTEMBER 19, 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 June 12, 2007. The decision and order prepared by the hearing officer reflects that the parties reached an agreement at the CCH that the respondent 1 (claimant) is entitled to supplemental income benefits (SIBs) for the first, second, and third quarters but is not entitled to SIBs for the fourth quarter. Neither party appealed the hearing officer's determinations regarding the entitlement to SIBs for the first, second, and third quarters or the nonentitlement to SIBs for the fourth quarter.

In a Texas Department of Insurance, Division of Workers' Compensation (Division) Order for Attorney's Fees (Order) dated July 3, 2007 (Sequence 21), \$3,902.50 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 January 29 through June 27, 2007. The appellant (attorney) appealed the reduction in the hourly rate made by the hearing officer. The attorney requested \$200.00 per hour and although the hearing officer approved all of the hours requested, the rate approved was \$150.00 per hour. The appeal file does not contain a response from either the claimant or the respondent 2 (carrier).

DECISION

Reversed and remanded.

The attorney requested 25.85 hours for attorney services at the rate of \$200.00 per hour and 0.50 hours for legal assistant services at the rate of \$50.00 per hour. The hearing officer approved 25.85 hours for attorney services at the rate of \$150.00 per hour and 0.50 hours for legal assistant services at the rate of \$50.00 per hour for a total fee of \$3,902.50. The attorney contends that the hearing officer abused her discretion in failing to approve attorney's fees at the rate of \$200.00 per hour as requested by the attorney.

The standard for review in an attorney's fees case is abuse of discretion. Appeals Panel Decision (APD) 061189, decided July 24, 2006. 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 as to quarters one, two, and three. See APD 962504, decided January 27, 1997. 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 fees where the claimant prevails in a SIBs dispute. APD 970805, decided June 18, 1997.

The Division's Attorney Fee Processing System reflects that the attorney provided a justification text for the fees requested, although it does not contain the complete justification text submitted with the application which specifically addressed the matter of the hourly rate charged for representation in a SIBs dispute. There is no log text reflecting why the hearing officer reduced the hourly rate requested or if the hearing officer considered the attorney's justification text. The hearing officer abused her discretion by reducing the hourly rate requested without explanation. APD 052592, decided January 18, 2006.

We reverse the Order and remand the attorney's fees matter to the hearing officer for the hearing officer to consider the attorney's full justification text and the factors set forth in Section 408.221(d) in determining whether the \$200.00 hourly rate should be approved.

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 Division, 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 **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge