

APPEAL NO. 071433
FILED NOVEMBER 26, 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 was held on June 5, 2007. The hearing officer resolved the disputed issues by deciding that the respondent 2 (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, or third quarters, but is entitled to SIBs for the fourth quarter. The claimant appealed the hearing officer's determination regarding SIBs entitlement for the first, second, and third quarters. The Appeals Panel did not issue a decision and the hearing officer's decision and order became final on August 16, 2007, and is the decision of the Appeals Panel. Section 410.204(c).

On July 16, 2007, the hearing officer issued a Texas Department of Insurance, Division of Workers' Compensation (Division) Order for Attorney's Fees (Order) covering services for the period June 4 through June 20, 2007, approving 9.10 hours out of the 9.50 hours requested for the respondent 1's (claimant's attorney) time at the rate of \$150.00 per hour and approving 0.75 hours requested for a legal assistant's time at the rate of \$50.00 per hour for a total of \$1,402.50. The Order provides that the fee is to be paid pursuant to Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The appellant (carrier) has appealed, arguing that the claimant's attorney's "time was not, but should have been, separated by quarter," and that the carrier "has no way of knowing which services rendered were for the fourth quarter." The carrier concedes that it is liable for the fourth quarter of SIBs, but is not liable for the first, second, or third quarters of SIBs. The appeal file does not contain a response from the claimant or the claimant's attorney.

DECISION

Reversed and remanded.

Section 408.147(c) and Rule 152.1(f) provide essentially that a carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of a carrier's dispute of SIBs entitlement when the employee prevails. Those fees are paid by the carrier only when it disputes SIBs and loses. The Appeals Panel has held that where an adjudication of a SIBs dispute has resulted in a determination of entitlement to some quarters and nonentitlement to other quarters, the hearing officer entering the order on attorney's fees must allocate the fees amongst the different quarters in that the carrier is only liable for the portion of the fees attributable to the SIBs quarters to which it disputed the claimant's entitlement and on which the claimant later prevailed. See Appeals Panel Decision (APD) 052419, decided December 21, 2005.

The Division's Attorney Fee Processing System indicates that a justification text or log text was not submitted in connection with the Order (Sequence 17). We are not able to determine from the record before us which of the attorney's fees are attributable

for services performed for the fourth quarter and which for services performed for the other quarters within the time period covered by the Order (Sequence 17). Accordingly, we reverse the Order (Sequence 17) and remand the attorney's fee issue for a hearing on remand at which the parties may present evidence as to which fees are allocable to which quarter so that the hearing officer may approve fees allocable to the fourth quarter only.

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 **CORTLANDT INSURANCE COMPANY**¹ and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1021 MAIN STREET, SUITE 1150
HOUSTON, TEXAS 77002-6508.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge

¹ We note that the carrier's appeal lists "Sierra Insurance Company of Texas" as the insurance carrier, however the carrier information sheet (Hearing Officer's Exhibit No. 2) explains in a notation the Division's website indicates that "Sierra Insurance Company of Texas" is now "Cortlandt Insurance Company" and that the registered agent for service of process is CT Corporation, 1021 Main Street, Suite 1150, Houston, Texas 77002-6508.