

APPEAL NO. 110163
FILED APRIL 4, 2011

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 December 8, 2010. In that case, the hearing officer determined that the Texas Department of Insurance, Division of Workers' Compensation (Division) should not contact the designated doctor to resolve the impairment rating issue regarding the designated doctor's report dated August 12, 2009, pursuant to 28 TEX. ADMIN. CODE § 126.7(u) (Rule 126.7(u)).¹ Division records show that decision has not been appealed. The hearing officer subsequently issued an order awarding 7.45 hours of attorney fees at \$150.00 an hour and .40 hours of legal assistant fees at \$50.00 an hour for a total attorney fee of \$1,137.50 to the attorney for the employee on January 18, 2011.

The appellant (carrier) appealed the order on attorney fees pointing out that the order said the attorney fees were to be paid pursuant to Section 408.147(c) and Rule 152.1(f) rather than Rule 152.2(d). The file does not contain a response from either the respondent (claimant) or the claimant's attorney.

DECISION

Reversed and a new order issued.

The Division Order for Attorney's Fees Sequence No. 20, dated January 18, 2011, awards attorney fees to the claimant's attorney for requested dates of service from December 1 through December 31, 2010, as provided in an itemized listing of the claimant's attorney's fees. The order further directs that the attorney fees were to be paid "pursuant to [Section 408.147(c)] and Division Rule 152.1(f)." Section 408.147(c) provides:

If an insurance carrier disputes a commissioner's determination that an employee is entitled to supplemental income benefits [SIBs] or the amount of [SIBs] due and the employee prevails on any disputed issue, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of the insurance carrier's dispute and for [SIBs] accrued but not paid and interest on that amount, according to Section 408.064.

Similarly Rule 152.1(f) provides:

- (f) An attorney for an employee who prevails when a carrier a [Division] determination of eligibility for [SIBs] shall be eligible to receive a reasonable and necessary attorney's fee, including expenses. This

¹ We note that this provision is now found in Rule 127.20 of the new designated doctor rules.

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 [Rule] 152.4 of this title (relating to Guidelines for Legal Services Provided to Claimants and Carriers), apply.

These provisions apply only to SIBs cases. The proceeding for which attorney fees were requested dealt with impairment income benefits and a determination of an extent of injury, not with the claimant's determination of eligibility for SIBs.

The requested attorney's fees comply with the Guidelines in Rule 152.4. The Division Order on Attorney's Fees should read that the fees are to be paid to the attorney for an employee pursuant to Rules 152.1 and 152.2.

Accordingly, we reverse the Division Order for Attorney's Fees Sequence No. 20, dated January 18, 2011, and render a new order that attorney's fees are to be paid only from the claimant's benefits in the amount of 25% of each of the claimant's income benefit payments and/or unpaid accrued benefits (lump sum) until the amount approved in Request for Attorney's Fees is paid pursuant to Rules 152.1 and 152.2. The attorney's fees are to be paid only if income benefits are paid to the claimant.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
225 EAST JOHN CARPENTER FREEWAY, SUITE 1300
IRVING, TEXAS 75062-2281.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge