

APPEAL NO. 130865
FILED JUNE 6, 2013

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 September 7, 2010, in [City], Texas, with [hearing officer] presiding as hearing officer. In that case, the hearing officer determined 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) show that decision has not been appealed.

The hearing officer subsequently issued an order awarding 9.90 hours of attorney fees at \$150.00 an hour and .30 hours of legal assistant fees at \$50.00 an hour for a total attorney fee of \$1,500.00 to the attorney for the employee on March 6, 2013. 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 Division Order for Attorney's Fees (Order) Sequence 51, dated March 6, 2013, awards attorney fees to the claimant's attorney for requested dates of service from August 2 through September 16, 2010, as provided in an itemized listing of the claimant's attorney's fees. The order states that attorney's fees are to be paid to the attorney pursuant to Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)), and issued in accordance with the guidelines set forth under Rule 152.4. The attorney contends that the hearing officer abused his 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. See APD 962504, decided January 27, 1997, and APD 071432, decided September 19, 2007. 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. 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 his 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 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge