

APPEAL NO. 132126
FILED OCTOBER 10, 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 May 13, 2013, 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 second quarter on the basis of waiver by respondent 2 (self-insured). Records of the Texas Department of Insurance, Division of Workers' Compensation (Division) show that decision was appealed, but that a written decision was not issued by the Appeals Panel and the hearing officer's decision and order became final on August 9, 2013. See Section 410.169.

The hearing officer issued an order on July 19, 2013, denying 24.25 hours of attorney's fees at \$200.00 an hour and 1.50 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee request of \$4,925.00. The appellant (attorney) appealed the denial of attorney's fees by the hearing officer, citing Section 408.147 which specifically provides an award of attorney's fees when the claimant prevails on a disputed SIBs quarter. Self-insured responded, urging affirmance of the denial of attorney's fees.

DECISION

Reversed and remanded.

The Division Order for Attorney's Fees (Order) Sequence No.16, dated July 19, 2013, denies attorney's fees to the claimant's attorney for requested dates of service from February 3 through May 13, 2013, as provided in an itemized listing of the claimant's attorney's fees.

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 28 TEX. ADMIN. CODE § 152.1(f) (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's 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. The hearing officer's log text regarding the Order Sequence No. 16 denying the fees states that the fees were denied because a determination of entitlement to second quarter SIBs was currently pending at the Appeals Panel. Division records reflect that the hearing officer's determination that the claimant is entitled to second quarter SIBs by virtue of waiver has become final. Accordingly, we reverse the hearing officer's denial of the requested attorney's fees and remand the attorney's fees requested in Sequence No. 16 to the hearing officer for further consideration of the attorney's full justification text and the factors set forth in Section 408.221(d).

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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
[ADDRESS]
[CITY], TEXAS [ZIP CODE].**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge