

APPEAL NO. 132127
FILED OCTOBER 31, 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 (CCH) was held on July 16, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. In that case, the hearing officer determined that: (1) the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter, January 17 through April 16, 2012; (2) per the parties' stipulation, the claimant is not entitled to SIBs for the second quarter, April 17 through July 16, 2012, the third quarter, July 17 through October 15, 2012, or the fourth quarter, October 16, 2012, through January 14, 2013; and (3) the claimant is not entitled to SIBs for the fifth quarter, January 15 through April 15, 2013, or the sixth quarter, April 16 through July 15, 2013. Records of the Texas Department of Insurance, Division of Workers' Compensation (Division) show that decision was not appealed and the hearing officer's decision and order became final pursuant to Section 410.169.

A Division employee issued an order on August 6, 2013, granting 22.00 hours of attorney's fees at \$200.00 an hour for a total attorney fee request of \$4,400.00; the hearing officer of the underlying SIBs determination issued two orders for attorney's fees dated August 7, 2013. The first order granted 25.50 hours of attorney's fees at \$200.00 an hour for a total attorney fee request of \$5,100.00. The second order granted 26.75 hours of attorney's fees at \$200.00 an hour (\$5,350.00) and 0.25 hours of time for a legal assistant at \$50.00 an hour (\$12.50) for a combined total of \$5,362.50. The appellant (carrier) appealed the granting of attorney's fees by both the Division employee and the hearing officer. The carrier contends that the fees are excessive and bill for services unrelated to the first quarter of SIBs and that the Division should not award attorney's fees incurred by the claimant in defrauding the carrier. The claimant's attorneys responded, urging affirmance of the award of attorney's fees.

DECISION

Appeal dismissed in part and reversed and remanded in part.

The Division Order for Attorney's Fees (Order) Sequence No. 54, dated August 6 2013, grants attorney's fees to the claimant's attorney for requested dates of service from January 30 through June 25, 2012, as provided in an itemized listing of the claimant's attorney's fees. The Order for Sequence No. 55, dated August 7, 2013, grants attorney's fees to the claimant's attorney for requested dates of service from June 8, 2012, through February 22, 2013. The Order for Sequence No. 56, dated August 7, 2013, grants attorney's fees to the claimant's attorney for requested dates of service from February 22 through July 31, 2013.

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.

Rule 152.3(d) provides in part that, except as provided in subsection (e), an attorney, claimant, or carrier who contests the fee fixed and approved by the Division shall request a CCH. Rule 152.3(e) provides that an attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a CCH shall request review by the Appeals Panel pursuant to the provisions of Rule 143.3. The disputed attorney's fees in the Order for Sequence No. 54 was not approved by a hearing officer, which is required for contesting attorney's fees under Rule 152.3(e). Accordingly, the carrier's appeal regarding Order for Sequence No. 54 is hereby dismissed. However, we note that Division records indicate the carrier timely requested a CCH regarding the Order for Sequence No. 54 which is currently set.

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 APD 052419 decided December 21, 2005, and APD 071433, decided November 26, 2007.

A hearing officer after a CCH approved the attorney's fees requested in Orders for Sequence Nos. 55 and 56. We are not able to determine from the record before us which of the attorney's fees are attributable for services performed for the first quarter and which for services performed for other quarters within the time period covered by the Orders in Sequence Nos. 55 and 56. Accordingly, we reverse the Orders for Sequence Nos. 55 and 56 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 first 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 060721, decided June 12, 2006.

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

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge