

APPEAL NO. 140916  
FILED JUNE 25, 2014

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 March 25, 2014, in [City 1], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that an attorney's fee in the amount of \$8,687.50 is reasonable and necessary for services rendered in Sequence Nos. 30, 31, 32, and 34 (four attorney's fee orders dated February 3, 2014), and Sequence No. 35 (one attorney's fee order dated February 4, 2014).

The appellant (carrier) appealed the hearing officer's determination. The carrier points out that the hearing officer specifically found that the carrier failed to timely dispute the attorney's fees ordered in Sequence Nos. 30, 31, 32, 34, and 35. The carrier contends that it did timely dispute those attorney's fee orders, and also that the attorney's fees in the amount of \$8,687.50 were not reasonable and necessary. Respondent 1 (attorney) responded on behalf of respondent 2 (claimant), urging affirmance of the hearing officer's determination.

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

**TIMELINESS OF CARRIER'S REQUEST FOR CCH FOR ORDER FOR  
ATTORNEY'S FEES ISSUED FEBRUARY 3, 2014**

The hearing officer in Finding of Fact No. 15 found that the carrier failed to timely dispute the attorney's fees ordered in Sequence Nos. 30, 31, 32, 34, and 35.

The hearing officer stated the following in the Discussion portion of the decision:

The evidence indicates that attorney fee orders in [Sequence Nos.] 30, 31, 32, and 34 were dated February 3, 2013. . . . [The] [c]arrier has 15 days

to dispute the attorney fee orders. Case law indicates that the date the attorney fee awards are approved is the date the [c]arrier received the notice in [City 2] central. [The] [c]arrier disputed the attorney fee awards in question on February 20, 2014. Their dispute was untimely and the fees became final. . . .

The Texas Department of Insurance, Division of Workers' Compensation (Division) issued four attorney's fee orders on February 3, 2014. 28 TEX. ADMIN. CODE § 152.3(d) (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. It is undisputed that all of the attorney's fees contested by the carrier in this case are fees fixed and approved by the Division rather than fees ordered by a hearing officer after a CCH. As such, Rule 152.3(d) applies in this case rather than Rule 152.3(e).

The attorney's fee orders issued by the Division on February 3, 2014, reflect that a copy was sent to the carrier. In the usual course of business, a Division order for attorney's fees is printed out by computer and a copy is placed in the box of the carrier's [City 2] representative on the same day the order is printed. Under Rule 156.1(a) each carrier is required to designate an [City 2] representative to act as agent for receiving notice from the Division, and under Rule 156.1(c), notice to the carrier's [City 2] representative is notice to the carrier. We note that the carrier's [City 2] representative, as shown on the cover letter for the hearing officer's decision in this case, is the same law firm which is representing the carrier on this appeal. Four attorney's fee orders were issued on February 3, 2014, and in the regular course of business, copies of those attorney's fee orders would be placed in the carrier's [City 2] representative's box on February 3, 2014.

The carrier contends that it received the attorney's fee orders on February 5, 2014, via facsimile transmission, and that it had 15 days excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Government Code from that date to request a CCH to dispute the attorney's fee orders.

Rule 102.5(d) provides in part that, unless the great weight of the evidence indicates otherwise, the carrier is deemed to have received the hearing officer's decision the first working day after the decision was placed in the carrier's [City 2] representative's box. Therefore, the carrier is deemed to have received the four attorney's fee orders issued February 3, 2014, on February 4, 2014. The carrier's mere

assertion that it received the attorney's fee orders on February 5, 2014, is insufficient to extend the time period to file a CCH to dispute the attorney's fee orders.

In Appeals Panel Decision (APD) 050351, decided March 29, 2005, the Appeals Panel noted that Rule 102.3(b) provides that use of the term "day" rather than "working day" shall mean a calendar day; Rule 152.3(d) states that "no later than the 15th day after receipt of the [Division's] order"; and that the provisions of Rule 143.3(d) regarding not including Saturdays and Sundays and holidays listed in Section 662.003 of the Government Code applies to the computation of time in which to file a request for appeal with the Appeals Panel, and not to a request for a CCH under Rule 152.3(d). See APD 050351, *supra*.<sup>1</sup> The carrier's assertion that it had 15 days excluding Saturdays and Sundays and holidays listed in Section 662.003 to timely request a CCH is without merit.

Pursuant to Rule 102.5(d) as discussed above, the carrier is deemed to have received the attorney's fee orders issued February 3, 2014, on February 4, 2014. Pursuant to Rules 102.3(b), 152.3(d), and APD 050351, *supra*, the carrier had 15 days to file a request for a CCH to dispute those orders. The 15th day after February 4, 2014, is February 19, 2014. The carrier's request for a CCH dated February 20, 2014, to dispute the attorney's fee orders issued February 3, 2014, is untimely. Accordingly, that portion of the hearing officer's Finding of Fact No. 15 that the carrier failed to timely dispute the attorney's fees ordered in Sequence Nos. 30, 31, 32, and 34 is supported by the evidence and is affirmed.

#### **TIMELINESS OF CARRIER'S REQUEST FOR CCH FOR ATTORNEY'S FEE ORDER ISSUED FEBRUARY 4, 2014**

The order approving attorney's fees in the amount of \$627.50 for Sequence No. 35 was issued February 4, 2014. As explained above, a copy of the attorney's fee order issued February 4, 2014, was placed in the box of the carrier's [City 2] representative on that same date. Pursuant to Rule 102.5(d), the carrier is deemed to have received the attorney's fee order on February 5, 2014. The 15th day after February 5, 2014, is February 20, 2014. The carrier's request for a CCH dated February 20, 2014, to dispute the attorney's fees approved in the order issued February 4, 2014, is timely. That portion of the hearing officer's Finding of Fact No. 15 that the carrier failed to timely dispute the attorney's fees ordered in Sequence No. 35 is legally incorrect. Accordingly, we reform by striking that portion of the hearing officer's Finding of Fact No. 15 that the carrier failed to timely dispute the attorney's fees ordered in Sequence No. 35.

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<sup>1</sup> We note that APD 050351 cites an older version of Rule 143.3; however, both versions of Rule 143.3 retain the same language excluding Saturdays and Sundays and holidays listed in Section 662.003.

## **REASONABLE AND NECESSARY**

It was undisputed by the parties that the carrier disputed second quarter supplemental income benefits (SIBs) on October 25, 2013. It was also undisputed by the parties that attorney's fees in the amount of \$2,365.00 were approved by the Division for work performed prior to the date the carrier disputed second quarter SIBs. The carrier contends that these fees are not reasonable and necessary because they were billed for services performed prior to the date it disputed second quarter SIBs.

In the Discussion portion of the decision, the hearing officer stated the following:

[The] [c]arrier disputed the attorney fee awards in question on February 20, 2014. Their dispute was untimely and the fees became final, even the fees for work done prior to the dispute for the second quarter of [SIBs]. This fee totaled \$2,365.00. Thus if it is determined that the [c]arrier timely disputed the attorney fee orders at issue, the \$2,365.00 in attorney's fees addressed above would not be reasonable.

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All of the rest of the attorney's fees were for legal services that were reasonable, necessary and performed.

The hearing officer found in Finding of Fact No. 16 that attorney's fees totaling \$8,687.50 (which includes the \$2,365.00 attorney's fees mentioned above) were reasonable and necessary, and therefore determined that an attorney's fee in the amount of \$8,687.50 is reasonable and necessary for services rendered in Sequence Nos. 30, 31, 32, 34, and 35.

The evidence established that the \$2,365.00 in attorney's fees for work done prior to the carrier's dispute of second quarter SIBs were approved in one of the attorney's fee orders issued February 3, 2014. As discussed above, the carrier did not timely file a request for a CCH to dispute the attorney's fees approved in any of the orders issued February 3, 2014. The hearing officer's determination that an attorney's fee in the amount of \$8,687.50 is reasonable and necessary for services rendered in Sequence Nos. 30, 31, 32, 34, and 35 is supported by the evidence and is affirmed.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

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

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge