

APPEAL NO. 152636
FILED MARCH 23, 2016

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 29, 2015, in Waco, Texas, with (hearing officer) presiding as hearing officer. In that case, the hearing officer determined that respondent 1 (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters but is entitled to SIBs for the third quarter. 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 26, 2015. See Section 410.169.

Another CCH was held on November 4, 2015, in Waco, Texas, with (hearing officer) presiding as hearing officer. In that case, the hearing officer determined that claimant is entitled to SIBs for the fourth quarter. Records of the Division show that decision was not appealed.

The hearing officer issued an order on December 22, 2015, in Sequence No. 60, approving an attorney fee request submitted by respondent 2 (claimant's attorney) for services performed during the period from April 20 through August 19, 2015, including 23.50 hours of attorney's fees at \$200.00 an hour and 5.75 hours of legal assistant's fees at \$50.00 an hour for a total attorney fee award of \$4,987.50. The appellant (carrier) appealed the award of attorney's fees arguing that the order in this case issued in accordance with Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)) constitutes legal error as the carrier never disputed a "commissioner's determination" that the claimant was entitled to SIBs. The carrier further argues that the approved attorney fee application does not specify which services were performed for which quarters nor does it prorate services performed between the various quarters at issue. The appeal file does not contain a response from either the claimant or the claimant's attorney.

DECISION

Reversed and remanded.

The standard for review in an attorney's fee case is abuse of discretion. Appeals Panel Decision (APD) 061189, decided July 24, 2006. Since this case involves a claimant's attorney's fee 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'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 stating that "[t]hese hours were to obtain benefits for the [third quarter] of SIBs. We prevailed at a CCH." Division records reflect, however, that the issues in dispute at the benefit review conference (BRC) on June 25, 2015, were entitlement to SIBs for the first and second quarters and that the claimant did not prevail of either of those quarters. Accordingly, hours devoted to preparation for and attending that BRC are not payable by the carrier pursuant to Rule 152.1(f). Furthermore, the issues in dispute at the CCH on July 29, 2015, included entitlement to SIBs for the first, second and third quarters. We are not able to determine from the record before us which of the attorney's fees covered by the fee order in Sequence No. 60 are attributable to services performed for the third and, possibly, the fourth quarters and which were for services performed for the first and second quarters.

Accordingly, we reverse the hearing officer's approval of the requested attorney's fees and remand the attorney fee order in Sequence No. 60 to the hearing officer for a hearing regarding the requested fees. At the hearing the hearing officer shall consider evidence regarding the fees for services rendered for SIBs by specific quarter and make a determination concerning which fees are subject to the provisions of Rule 152.1(c) and the guidelines in Rule 152.4 and which fees are subject to the provisions of Section 408.147(c) and Rule 152.1(f). The hearing officer will then enter a decision awarding attorney's fees in accordance with the applicable statute and rules set forth in this decision.

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 **AMERICAN ZURICH INSURANCE COMPANY** 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.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge