

APPEAL NO. 950388

This appeal arises under the provisions of the Texas Workers' Compensation Act, TEX. LABOR CODE ANN. § 401.001 *et seq.* (1989 Act). Appellant, the attorney for the claimant, filed an application for his attorney's fees with the Texas Workers' Compensation Commission (Commission) pursuant to Section 408.221 for representing a claimant under the 1989 Act. The fee application received by the Commission was for work from September 6, 1994, to February 3, 1995. On February 28, 1995, a "COMMISSION ORDER FOR ATTORNEY'S FEES" approved none of the \$6,823.00 requested in the document he filed with the Appeals Panel. Claimant's attorney requests that we reverse the order of the Commission and render a decision awarding the requested fees and expenses, based upon his representation concerning the complexity of the case. The appeal file does not reflect that a response was received.

DECISION

Because the claimant has recovered no workers' compensation benefits, the Commission's award of attorney's fees is affirmed.

Section 408.221(b) provides in part that (with one exception not relevant herein, concerning supplemental income benefits (SIBS)), an attorney's fee must be paid from the claimant's recovery. Section 408.221(c) sets forth certain matters to be considered by the Commission in approving attorney's fees for a claimant's counsel; one consideration is "the benefits to the claimant that the attorney is responsible for securing." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.2(d) (Rule 152.2(d)) provides that the total amount that the Commission approves for the attorney's time and expenses constitutes the fee, which shall not exceed 25% of the claimant's recovery, except as relating to a dispute over SIBS.

In the case for which this attorney seeks fees, the claimant is not entitled to any recovery of benefits since the Appeals Panel has affirmed the hearing officer's decision that the claimant did not suffer a compensable injury, and that she did not have good cause for failing to timely notify her employer of an injury. Texas Workers' Compensation Commission Appeal No. 950373, decided April 20, 1995. Under similar circumstances this panel has held a claimant's attorney to be entitled to no fee. See Texas Workers' Compensation Commission Appeal No. 91005A, decided August 14, 1991; see *also* Texas Workers' Compensation Commission Appeal No. 93743, decided November 3, 1993, and cases cited herein.

Based upon the foregoing, the order of the Commission approving no fees is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge