

APPEAL NO. 051321
FILED JULY 27, 2005

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 February 22, 2005. The hearing officer determined that respondent 1 (claimant) is entitled to supplemental income benefits (SIBs) for the 10th quarter but is not entitled to SIBs for the 11th quarter.

On June 1, 2005, another hearing officer (hearing officer 2) issued a Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (Order) covering services for the period from January 20 through May 9, 2005, approving 20.55 hours for attorney A1, and .55 hours for attorney A2 at \$150.00 an hour totaling \$3,165.00 plus 1.35 hours of legal assistant time at \$50.00 an hour for \$67.50, and a total approved fee as requested, of \$3,232.50. The Order provides that the fee is to be paid pursuant to Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The appellant (carrier) appeals the Order, contending that the Order "does not reflect a separation of fees for the 10th and 11th quarters" and that since the claimant only prevailed on one quarter "the carrier is going to issue payment in the amount of \$1,616.25" which constitutes half of the ordered amount. The appeal file does not contain a response from either respondent 2 (attorney) or the claimant.

DECISION

Reversed and remanded.

It does not appear that a justification text or log text was submitted in connection with the Order. 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. Texas Workers' Compensation Commission Appeal No. 970879 decided June 25, 1997, and cases cited in that case.

The Order approves attorney's fees for services performed from January 20 through May 9, 2005. It approves "Actions" entitled performed legal research, drafting letters, telephone conferences, "Receive/Review Documents," prepare for proceedings, and attending proceedings and travel time to attend proceedings. There is no information from which the Appeals Panel can determine the quarter with which each item dealt. The attorney requested, and the Order approved, \$3,232.50 in total fees. The carrier does not appeal the reasonableness of the fees.

Section 408.147(c) reads:

- (c) If an insurance carrier disputes a commission determination that an employee is entitled to supplemental income benefits [SIBs] or the amount of [SIBs] due and the employee prevails on any disputed issue, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of the insurance carrier's dispute and for [SIBs] accrued but not paid and interest on that amount, according to Section 408.064. Attorney's fees awarded under this subsection are not subject to Sections 408.221(b), (f), and (i).

Rule 152.1(f) reads:

- (f) An attorney for an employee who prevails when a carrier contests a Commission determination of eligibility for [SIBs] shall be eligible to receive a reasonable and necessary attorney's fee, including expenses. This fee is payable by the carrier, not out of the employee's benefits and the fee shall not be limited to a maximum of 25% of the employee's recovery. All provisions of these rules, except § 152.4 of this title (relating to Guidelines for Legal Services Provided to Claimant's and Carriers), apply.

The carrier appears to concede that it would be liable for attorney's fees for services performed for the 10th quarter where the claimant prevailed but not for the 11th quarter where the carrier prevailed. Consequently, the carrier took a practical approach and simply halved the attorney's fees in the Order to cover attorney's fees for the 10th quarter.

As previously indicated, we are not able to determine from the record before us which of the attorney's fees are attributable for services performed for the 10th quarter and which for services performed for the 11th quarter. In Appeal No. 970879, *supra*, the Appeals Panel stated:

We encourage the adjudication of multiple disputed quarters of SIBS by consolidating issues into one CCH, where appropriate, and it is permissible for an attorney to complete one fee application for multiple quarters of SIBS. However, when the adjudication of the disputed SIBS quarter . . . results in entitlement to one or more quarters previously disputed by the carrier and nonentitlement to one or more quarters, the hearing officer entering the order for attorney's fees must allocate the fees amongst the different quarters.

See *also* Texas Workers' Compensation Commission Order No. 97020, decided June 16, 1997.

Accordingly, we reverse the Order and remand for a CCH 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 10th 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 Commission's Division of Hearings, 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 Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

**CORPORATION SERVICES COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge