

APPEAL NO. 052568
FILED JANUARY 23, 2006

This appeal arises pursuant to Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 29, 2005, (hearing officer 1) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that respondent 1 (claimant) is entitled to supplemental income benefits (SIBs) for the ninth quarter. On November 2, 2005, hearing officer 1 issued a Commission Order for Attorney's Fees (Order), Sequence 75, granting 9.25 hours requested by the appellant (attorney) (and an additional 1.75 hours of legal assistant time not appealed and not at issue) for services rendered from March 25 to May 5, 2005, but reduced the \$200.00/hour rate requested to \$150.00/hour. Also on November 2, 2005, hearing officer 1 issued another order, Sequence No. 74, granting 15.50 hours attorney fees (and an additional .75 hours legal assistant time not at issue) for services rendered from May 6 to July 12, 2005, but again reduced the requested \$200.00/hour rate to \$150.00/hour. On November 3, 2005, (hearing officer 2) issued an order, Sequence No. 73, granting 6 hours requested attorney fees for services rendered from August 2 to September 14, 2005, also reducing the requested \$200.00/hour rate to \$150.00/hour. The attorney appealed all three orders, contending that claimant had prevailed in a SIBs case for the ninth quarter, that claimant's attorney's fees for SIBs cases, where the claimant prevails, are payable under Section 408.147(c) and that 28 TEX. ADMIN. CODE § 152.4(d) (Rule 152.4(d)) does not apply. The attorney contends that a rate of \$200.00 has been approved in other cases and that the hearing officer failed to provide any explanation why the requested \$200.00 per hour rate was not approved. The file does not contain a response from either the claimant or respondent 2 (carrier).

DECISION

Reversed and remanded.

The attorney submitted identical written Justification Texts with all three requests stating that the case had an unspecified "degree of novelty and difficulty" and stressing the attorney's experience and knowledge of workers' compensation law. The attorney contends that \$200.00 an hour is reasonable and that the \$200.00/hour attorney's fee is customary in the jurisdiction where he practices. Also included in the file are three affidavits, dated September 16, 2005, from the attorney giving greater detail regarding his work in this case. The Attorney Fee Processing System does not have a log text explaining the decision to award \$150.00 an hour as opposed to the \$200.00 an hour requested.

We note that Section 408.147(c) and Rule 152.1(f) provide that 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 employees' recovery. The Appeals Panel has held that the \$150.00 per hour limit of Rule 152.4(d) does not apply to SIBs cases. Appeals Panel Decision (APD) 002523, decided December 12, 2000. See *also* APD 030301, decided March 27, 2003, approving a \$200.00 per hour rate.

We review attorney's fees cases on an abuse-of-discretion standard. APD 022337, decided October 30, 2002. Upon our review of the record it is not clear whether the hearing officers considered the attorney's justification text or why they reduced the per hour requested fee. Nor is there any indication whether the carrier agrees or disagrees that the \$200.00 an hour is a reasonable fee. The hearing officers abused their discretion in reducing the per hour requested fee without any explanation.

Accordingly, we reverse the Orders and remand the attorney's fees matters for the hearing officer to consider the attorney's justification text and the factors set forth in Section 408.221(d) in determining whether the \$200.00 hourly rate requested should be approved.

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 Texas Department of Insurance, Division of Workers' Compensation 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 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PRENTICE HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge