

APPEAL NO. 220417
FILED MAY 12, 2022

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 January 19, 2022, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding: (1) attorney's fees in the amount of \$2,050.00 were reasonable and necessary for services rendered from June 1, 2021, through July 12, 2021; (2) the attorney's fees should be paid pursuant to 28 Tex. Admin. Code § 152.1(f) (Rule 152.1(f)); and (3) the appellant/cross-respondent 2 (claimant) is entitled to reimbursement of travel expenses from March 9, 2021, through November 1, 2021, for treatment at the direction of (Dr. S) in the amount of \$5,322.24. Appellant/cross-respondent 1 (attorney) appealed the ALJ's determination that attorney's fees in the amount of \$2,050.00 were reasonable and necessary for services rendered from June 1, 2021, through July 12, 2021. The attorney argues, in part, that it was error for the ALJ to fail to address the issue of whether the respondent/cross-appellant (self-insured) timely disputed the Texas Department of Insurance, Division of Workers' Compensation (Division) Order for Attorney's Fees (Order). The appeal file does not contain a response from the self-insured to the attorney's appeal. The self-insured cross-appealed, disputing the ALJ's determinations regarding travel reimbursement and that attorney's fees should be paid pursuant to Rule 152.1(f). The attorney responded, urging affirmance of the issues disputed by the self-insured.

DECISION

Affirmed in part and reversed and rendered in part.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.—Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

TRAVEL EXPENSES

The ALJ's determination that the claimant is entitled to reimbursement of travel expenses from March 9, 2021, through November 1, 2021, for treatment at the direction of Dr. S in the amount of \$5,322.24 is supported by sufficient evidence and is affirmed.

PAYMENT UNDER RULE 152.1(f)

The ALJ's determination that the attorney's fees should be paid pursuant to Rule 152.1(f) is supported by sufficient evidence and is affirmed. See Appeals Panel Decision (APD) 033375, decided February 19, 2004. See *also* APD 962504, decided January 27, 1997 (where the Appeals Panel determined that the claimant prevailed on the disputed issue of supplemental income benefits (SIBs) when the claimant received two quarters of SIBs in accordance with a benefit review conference agreement).

ATTORNEY'S FEES

In evidence is an Order approving attorney's fees in the amount of \$5,187.50 for services performed from June 6, 2021, through July 12, 2021. At the CCH, the attorney argued in closing arguments that the self-insured failed to timely dispute the Order. The Order was issued on July 14, 2021, and sent to the claimant, the claimant's attorney, and to the self-insured at their correct addresses of record. The attorney argues that the ALJ erred in failing to make findings regarding whether the self-insured timely disputed the Order. We agree. A review of the record reflects that the parties actually litigated whether the self-insured timely disputed the Order. The 1989 Act gives the Division the responsibility for approving attorney's fees and that in implementing a system to carry out that responsibility, the Division has set deadlines for filing a contest of an attorney's fee order. APD 990533, decided April 16, 1999, APD 971769, decided October 14, 1997, and APD 180777, decided May 8, 2018.

Prior to January 30, 2017, Rule 152.3(d) provided, 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 no later than the 15th day after receipt of the Division's order.

Rule 152.3(d) was amended effective January 30, 2017, to provide, in part, that to contest a Division order approving an application for attorney fees, an attorney, claimant, or insurance carrier must request a CCH no later than the 20th day after receipt of the Division's order.

Rule 102.5(d) provides, in pertinent part, that unless the great weight of evidence indicates otherwise, the Division will deem the received date of its written communications, including the attorney fee orders at issue, to be five days after the date mailed via United States Postal Service regular mail.

The Order approving the disputed attorney's fees is dated July 14, 2021. The ALJ failed to make any findings of fact regarding the date the self-insured received the Order. Pursuant to Rule 102.5(d) the self-insured was deemed to have received the Order five days after the date it was mailed. The evidence reflects that the Order was mailed to the self-insured's address of record on July 14, 2021. The 5th day after July 14, 2021, was Monday, July 19, 2021, so pursuant to Rule 102.5(d) the deemed date of receipt of the Order is July 19, 2021. We note that Rule 102.3(b) provides that use of the term "day" rather than "working day" shall mean a calendar day; that Rule 152.3(d) states that the request for CCH must be submitted no later than the 20th day after receipt of the Division 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 apply to the computation of the 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). The evidence reflects that the self-insured has not disputed the attorney's fees awarded in the Order in the amount of \$5,187.50 by requesting a CCH. The 20th day after July 19, 2021, the deemed date of receipt, was Sunday, August 8, 2021, so pursuant to Rule 102.3(a)(3) the deadline to dispute the Order was the next working day, which is Monday, August 9, 2021. Accordingly, we reverse the ALJ's determination that attorney's fees in the amount of \$2,050.00 were reasonable and necessary for services rendered from June 1, 2021, through July 12, 2021, and render a new decision that the Order was not timely disputed by the self-insured and became final.

SUMMARY

We affirm the ALJ's determination that the claimant is entitled to reimbursement of travel expenses from March 9, 2021, through November 1, 2021, for treatment at the direction of Dr. S in the amount of \$5,322.24.

We affirm the ALJ's determination that the attorney's fees should be paid pursuant to Rule 152.1(f).

We reverse the ALJ's determination that attorney's fees in the amount of \$2,050.00 were reasonable and necessary for services rendered from June 1, 2021, through July 12, 2021, and render a new decision that the Order was not timely disputed by the self-insured and became final.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

NAME
ADDRESS
CITY, TEXAS ZIP CODE.

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge