

APPEAL NO. 230290  
FILED APRIL 13, 2023

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 5, 2023, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding: (1) respondent 1, (attorney) was eligible for attorney fees paid in Sequences 7, 8, and 9 in a supplemental income benefits (SIBs) dispute pursuant to Section 408.147(c) and 28 Tex. Admin. Code § 152.1(f) (Rule 152.1(f)). We note that the Conclusions of Law portion of the decision does not reflect this determination, but rather states “[the] [a]ttorney fees in Sequences 7, 8, and 9 are to be paid by the [appellant (self-insured)].” We further note the Statement of the Case portion of the decision does not specify the full citation to Section 408.147(c). The appellant (self-insured) appealed the ALJ’s determination. The appeal file does not contain a response from the attorney or respondent 2 (claimant) to the self-insured’s appeal.

DECISION

Reversed and rendered.

In evidence are three Texas Department of Insurance, Division of Workers' Compensation (Division) Orders for Attorney's Fees (Order) approving attorney's fees in Sequences 7, 8, and 9. The Order in Sequence 7 was issued on October 10, 2022, in the amount of \$1,521.25 for services performed from May 6, 2022, through May 27, 2022. The Order in Sequence 8 was issued on October 6, 2022, in the amount of \$1,502.50 for services performed from June 1, 2022, through June 24, 2022. The Order in Sequence 9 was issued on October 6, 2022, in the amount of \$280.00 for services performed from July 6, 2022, through July 19, 2022. The orders were sent to the claimant and the attorney, at their correct addresses of record, and placed in the self-insured's (city) representative's box, on October 10, 2022, and October 6, 2022.

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 the first working day after the date placed in the self-insured's (city) representative's box.

The Orders approving the disputed attorney's fees are dated October 10, 2022, and October 6, 2022. The ALJ failed to make any findings of fact regarding the date the self-insured received the Orders. Pursuant to Rule 102.5(d) the self-insured was deemed to have received the Orders on the first working day after the orders were placed in the self-insured's (city) representative's box. The evidence reflects that the Orders were placed in the self-insured's (city) representative's box on October 10, 2022, and October 6, 2022. The day after October 10, 2022, was Tuesday, October 11, 2022. The day after October 6, 2022, was Friday, October 7, 2022. 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 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 requested an expedited CCH on November 10, 2022, to dispute the October 10, 2022, Order in the amount of \$1,521.25, and the October 6, 2022, Orders in the amount of \$1,502.50 and \$280.00. The 20th day after October 11, 2022, the deemed date of receipt of the October 10, 2022, Order, was Monday, October 31, 2022. The 20th day after October 7, 2022, was Thursday, October 27, 2022. The self-insured did not timely dispute the October 10, 2022, and October 6, 2022, Orders. Accordingly, we reverse the ALJ's determination that the attorney was eligible for attorney fees paid in Sequences 7, 8, and 9 in a SIBs dispute pursuant to Section 408.147(c) and Rule 152.1(f), and render a new decision that the October 10, 2022, and October 6, 2022, Orders were 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).**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge