

APPEAL NO. 011478-S
FILED AUGUST 13, 2001

This appeal is brought 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 May 11, 2001. The hearing officer resolved the sole disputed issue by determining that the respondent (claimant's attorney) was entitled to \$5862.50 in attorney fees. The appellant (carrier) filed a request for review asserting that the hearing officer erred in awarding attorney's fees to the claimant's attorney for services performed before the carrier disputed the claimant's entitlement to supplemental income benefits (SIBs). The claimant's attorney urges affirmance of the hearing officer's determination that the claimant's attorney is entitled to \$5,862.50 in attorney's fees as reasonable and necessary fees for services performed.

DECISION

Reversed and rendered.

At the CCH, the parties stipulated that the carrier disputed the claimant's entitlement to SIBs on January 12, 2000, and that the claimed attorney fees were reasonable, necessary, and performed, except for one hour of services which related to a subsequent quarter. By stipulating to these essential facts, the parties left the hearing officer with the task of applying the law to the facts. The fees at issue here related to the second SIBs quarter, with the carrier becoming liable for some amount of attorney's fees when the claimant prevailed in the dispute over second quarter SIBs. Section 408.147(c). The carrier took the position that attorney's fees may only be awarded for services performed after the carrier disputes the SIBs quarter in question. The claimant's attorney argued that all reasonable and necessary attorney's fees incurred should be paid by the carrier. The statutory provision at issue is Section 408.147(c). It provides that:

If an insurance carrier disputes a [Texas Workers' Compensation] commission determination that an employee is entitled to supplemental income benefits or the amount of supplemental income benefits 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 supplemental income benefits accrued but not paid and interest on that amount, according to Section 408.064. (*Emphasis added*)

The Appeals Panel has previously held that "the clear language of Section 408.147(c) . . . designate[s] the carrier's dispute as the action at which point the carrier then becomes liable for any resulting (and necessarily subsequent) attorney's services and fees." Texas Workers' Compensation Commission Appeal No. 990990, decided June 23, 1999 (unpublished). Texas Workers' Compensation Commission Appeal No. 950534, decided May 19, 1995 (unpublished), cited by the claimant's attorney, is not applicable to the facts of this case as it involves a disputed issue concerning whether the insurance carrier was liable

for attorney's fees only after the Commission ordered payment of SIBs. In the case at the bar, the issue is payment of attorney fees prior to the date that the insurance carrier disputes the SIBs claim, and not the date the Commission orders payment of SIBs.

The standard of review in attorney's fees cases is abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92375, decided September 14, 1992. To obtain a reversal based upon an abuse of discretion, some showing must be made that the determination is arbitrary or without any basis in the record, that is, whether the hearing officer acted without reference to any guiding rules or principles. Morrow v. H.E.B., 714 S.W.2d 297 (Tex. 1986). We find that hearing officer erred in his application of the law. Consequently, he erred in determining the amount of attorney fees to be approved.

We reverse the hearing officer's determinations and render a new decision that for the quarter in question, 24.25 hours of attorney time and 4.25 hours of paralegal time were reasonable, necessary, and performed; that attorney's fees are approved in the amount of \$3,850.00; and that the carrier is liable for \$3850.00 in attorney's fees incurred by the claimant as a result of the carrier's dispute.

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge