

APPEAL NO. 030641-s
FILED MARCH 27, 2003

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 21, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth and eighth quarters. On February 7, 2003, hearing officer issued a Texas Workers' Compensation Commission (Commission) Order For Attorney's Fees 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)), in which the hearing officer ordered that the claimant's attorney be paid \$2,450.00 in fees, the full amount for services performed during the period from January 10 to June 14, 2002. The appellant (carrier) appealed, and the claimant responded, urging affirmance.

DECISION

Affirmed.

We review attorney's fees cases under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The carrier argues that the fees ordered to be paid should be deducted from the claimant's recovery for SIBs for the disputed quarters. It argues that since the Commission initially determined that the claimant is not entitled to SIBs for the first quarter, the claimant did not "prevail" and the carrier should not have to pay the claimant's fees pursuant to Section 408.147(c). We reject this argument. If a claimant seeks SIBs for a particular quarter and the carrier disputes the claimant's entitlement to that quarter and the claimant prevails at a CCH, the claimant's attorney's fees are not deducted from the claimant's recovery. Texas Workers' Compensation Commission Appeal No. 970464, decided April 28, 1997. In those cases, the carrier is liable for payment of SIBs for that quarter and for attorney's fees necessary to dispute the denial for that quarter. See Appeal No. 970464, *supra*.

In Texas Workers' Compensation Commission Appeal No. 961981, decided November 18, 1996, the Appeals Panel stated,

We believe that Section 408.147(c) is applicable whenever a carrier disputes entitlement to SIBs and the Commission (the hearing officer) determines that the employee should prevail on the entitlement to SIBs; the carrier will be liable for reasonable and necessary attorney fees for any quarter where carrier had disputed that entitlement and claimant has prevailed. We believe that to hold otherwise would negate the purpose and intent of Section 408.147(c) and encourage carriers to dispute each and every quarter of SIBs after the first quarter. We do not believe the 1989 Act or Commission Rules require such a narrow reading to limit the potential payment of reasonable and necessary attorney's fees to one, and only one quarter, that being the first quarter.

See also Texas Workers' Compensation Commission Appeal No. 972049, decided November 20, 1997, where we stated,

Finally, the carrier argues essentially that attorney fees can never be awarded beyond a dispute over the Commission's first quarter determination. We utterly reject this argument, and believe it is expressly clear that the legislature intended, for SIBs to provide for an award of attorney fees, not payable from the SIBs benefit, for each quarter where the carrier's assessment of nonentitlement is overturned by the Commission or the courts. Texas Workers' Compensation Commission Appeal No. 950534, decided May 19, 1995.

Finding no legal error or abuse of discretion, the hearing officer's decision and order are affirmed.

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

**BEN SCHROEDER
ZURICH NORTH AMERICA
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge