

ADVISORY NO. 163

TOPIC: PLAINTIFF ATTORNEY'S FEES ON SIB'S

In selected instances, the Commission may order you to pay the claimant's attorney's fees, in addition to the supplemental income benefits recovered by the claimant in the course of a dispute resolution. There will be many instances in which you will not be required to pay the claimant's attorney's fees.

Sec. 408.147(c) requires the reimbursement of a claimant's attorney's fees only when the "insurance carrier disputes a Commission determination that an employee is entitled to supplemental income benefits....and the employee prevails on any disputed issue."

There are only two instances in which the Commission makes this determination. The first and most frequent will occur at the time of the determination of entitlement to supplemental income benefits for the first quarter. Subsequent quarters may involve a Commission determination if, at the Benefit Review Conference, the Benefit Review Officer enters an interlocutory order requiring that we pay benefits.

In all other contests, there is no Commission determination of entitlement. Therefore, it is our position that Sec. 408.147(c) would not apply and the carrier would not be obligated to separately reimburse the claimant's attorney's fees.

Refer to the TWCC order. It will direct that the attorney be paid "from the claimant's benefits" or be paid "in addition to" the claimant's benefits.