

## INSTRUCTIONS FOR THE APPLICATION FOR ATTORNEY'S FEES (DWC FORM-152)

The Division is authorized by the Texas Workers' Compensation Act, Texas Labor Code, Sections 408.221 and 408.222 to approve the fees paid to claimants' and carriers' attorneys who must file statements of time and expenses for Division consideration (Application for Attorney's Fees, DWC FORM-152). Guidelines for fees for specific services are stated in Rules 152.4 and 152.5. Another DWC FORM-152 must be submitted if there are more than 80 service detail actions on page 3.

### Explanation of Certain Information

Page 1, Block 2, Supplemental Income Benefits: Check "Yes" **only** when the claimant prevails at a proceeding on issues of disputed entitlement to Supplemental Income Benefits or the amount of the benefits. The carrier, not the claimant, is liable for attorney's fees incurred as a result of the carrier's unsuccessful dispute. When "Yes" is checked, the application must **only** be for fees and expenses related to the Supplemental Income Benefits issue at the proceeding. A separate DWC FORM-152 must be submitted for other fees and expenses.

Check "No" when other actions related to Supplemental Income Benefits (i.e., completing the Statement of Employment Status, discussing entitlement/amount with the adjuster, writing a letter, etc.) are performed.

Page 1, Blocks 5, 7, and 12: Attorney 1 is the primary attorney to whom the Division order for attorney's fees will be sent. Attorney 2 and Attorney 3 are attorneys within the same firm who perform services for the claimant or carrier. If more than three attorneys perform services, a separate DWC FORM-152 must be submitted.

Page 1, Total, Recap: Total hours requested for each actor (Attorney 1, Attorney 2, Attorney 3, and Legal Assistant) in the Recap block must match the hours detailed for each actor shown on page 3.

### Use of Justification Text

DWC Advisory 94-09, dated August 26, 1994, states that the Division's automated attorney fee processing system will not accommodate consideration of line item text or billing statements in the approval process. If the services provided require additional detail or clarification to justify payment, that justification must be in the form of a summary paragraph titled "Justification Text" attached to the DWC FORM-152. Billing statements submitted for review are obsolete.

When guidelines set out in Rules 152.4 and 152.5 are exceeded, justification text must be provided. For example, if you use category code BR (benefit review conference), the Division's automated attorney fee processing system will approve only two hours plus actual time in the conference regardless of the action codes. Additional time will be denied if no justification text is provided. If you are requesting time for attending a proceeding which exceeds the actual time of the proceeding, justification text must be provided.

The purpose of justification text required by Rule 152.3 is **not** to justify the attorney's ability or the reasonableness of the fee requested. Justification text must reference a specific entry to address the particular charges/requests which exceed the guidelines or otherwise need to be explained. For example, rather than writing "the time reflected is time reasonably necessary and required to adequately protect the interest of my client," be more specific with "the BRC was scheduled to begin at 10:00 a.m.; however, it did not begin until 11:00 a.m."

When a fee request includes expenses for travel, you should attach receipts and note the attachment in justification text.

### Duplication of Services

The automated system will flag as "duplicate services" such actions as multiple telephone calls made or several letters drafted on the same date by the same attorney or legal assistant to the same recipient. Please provide justification text explaining why the calls were made or letters drafted to the same individual(s); otherwise the actions will be denied.

### Denial of Fee

Generally, when there is a dispute about a denied fee and the fee request includes services through a contested case hearing, you must request a review by the Appeals Panel. When the dispute is about services prior to a contested case hearing or for services including appellate work, you must request a contested case hearing. Either request must be made no later than the 15th day after your receipt of the Division's order.

A dispute may be worked out through resubmission of the fee application. Please contact the field office handling the claim where you will be directed to the DWC employee who reviewed the original fee application. This will give you the opportunity to discuss why certain requests were denied.

If you resubmit your fee application, it is important to note in the justification text you are resubmitting a request for time or expenses previously denied and to provide a reason they should be reconsidered for approval. Do not resubmit text on those requests for time and expenses previously approved.

