

CHAPTER 152. ATTORNEYS' FEES

§152.1. Attorney Fees: General Provisions.

- (a) To be eligible to earn a fee, an attorney representing any party shall hold an active license to practice law in Texas and not be currently under suspension for any reason.
- (b) An attorney may receive a fee for representation of any party before the commission only after the commission approves the amount of the fee. An attorney shall not receive an amount greater than the fee approved by the commission, notwithstanding any agreements between the parties, including retainer fee agreements.
- (c) The fee approved by the commission shall be limited to 25% of each weekly income benefit payment to the employee, up to 25% of the total income benefits allowed and shall also be based on the attorney's time and expenses, subject to the guidelines and standards set forth in the Texas Workers' Compensation Act (the Act) and commission rules. An attorney's fee for representing an injured employee becomes a lien against any unpaid income benefits due the injured employee once the carrier receives the commission order approving the fee. The carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the commission order and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.
- (d) An attorney's fee for representing a claimant may upon request by the attorney or carrier and approval by the commission be commuted to a lump sum only out of a sum certain award or order to pay benefits. This commuted fee may be discounted for present payment at the rate provided under the Act, §401.023, and shall not exceed 25% of the unpaid sum certain. A commuted fee shall be recouped by the carrier out of the future income benefits paid to the represented claimant, not to exceed more than 25% out of any single payment. The fee for representing a claimant for death benefits cannot be commuted where the only dispute involves identification of the proper beneficiaries.
- (e) A client who discharges an attorney does not, by that action, defeat the attorney's right to claim a fee for services performed by that attorney prior to discharge.
- (f) An attorney for an employee who prevails when a carrier contests a commission determination of eligibility for supplemental income benefits shall be eligible to receive a reasonable and necessary attorney's fee, including expenses. This fee is payable by the carrier, not out of the employee's benefits, and the fee shall not be limited to a maximum of 25% of the employee's recovery. All provisions of these rules, except §152.4 of this title (relating to Guidelines for Legal Services Provided to Claimants and Carriers), apply.

The provisions of this §152.1 adopted to be effective February 22, 1991, 16 TexReg 774; amended to be effective April 20, 1994, 19 TexReg 2547.

§152.2. Attorney Fees: Representation of Claimants.

- (a) An attorney who represents a claimant shall notify the commission in writing within 10 days of undertaking representation, and shall provide a copy of the contract of employment if requested by the commission.
- (b) For purposes of computing the maximum amount of a fee that may be fixed and approved for a claimant's attorney, "claimant's recovery" shall not include:
 - (1) the amount of benefits paid to the claimant prior to hiring the attorney;
 - (2) benefits initiated or offered by an insurance carrier when the initiation or offer is based upon documentation in a claimant's file, and has not been the subject of a dispute with the carrier;

- (3) any undisputed portion of impairment benefits paid or offered to the claimant based upon an impairment rating that is assessed by the carrier, under the Texas Workers' Compensation Act (the Act), §4.26(f).
 - (4) the value of medical and hospital benefits provided to the claimant; or
 - (5) lifetime income or death benefits when the carrier admits liability on all issues involved, and when the maximum benefit is tendered in writing by a carrier, no later than the date on which the carrier is required to contest the claim.
- (c) An attorney shall not represent multiple legal beneficiaries on a claim for death benefits if it is reasonably foreseeable that a judgment favorable to one legal beneficiary would impact unfavorably on another legal beneficiary.
- (d) The total amount that the commission approves for the attorney's time and expenses constitute the fee, and shall not exceed 25% of the claimant's recovery, except as provided in the Act, §4.28(1)(2), and §152.1(f) of this title (relating to Attorney's Fees: General Provisions).

The provisions of this §152.2 adopted to be effective February 22, 1991, 16 TexReg 774.

§152.3. Approval or Denial of Fee by the Commission.

- (a) To claim a fee, an attorney representing any party shall submit Form TWCC-152, Application and Order for Attorney's Fees with time, hourly rate, and expenses itemized separately for the attorney and for any legal assistant. Additional justification, described in §152.4 of this title (relating to Guidelines For Legal Services Provided to Claimants and Carriers), must be attached to the application form for any fee which exceeds the guideline. The commission may also require additional justification for fees which do not exceed the guideline. A copy of the form shall be sent simultaneously to the attorney's client.
- (b) The commission shall review each fee application submitted. If the application is for actual time and expenses which are reasonable given the circumstances of the specific claim and which are equal to or less than those allowed by the guideline established in §152.4 of this title, the commission may approve the application, and, if approved, shall issue an order for payment. If the fee application is for more than the guidelines allow, the commission shall issue an order to pay the fees which are reasonable given the circumstances of the specific claim and which are adequately justified in writing with any necessary supporting documentation. The commission shall deny any portion of the fee which exceeds the guideline and which is not adequately justified.
- (c) The aggregate attorney fee for representing a claimant shall not exceed 25% of the claimant's recovery. The commission shall apportion the fee between attorneys when more than one attorney claims a fee for representing the same party. The commission shall consider each claim based upon the factors and guidelines outlined in the Act and these rules.
- (d) Except as provided in subsection (e) of this section, an attorney, claimant, or carrier who contests the fee fixed and approved by the commission shall request a benefit contested case hearing. The request shall be made by personal delivery or first class mail and be filed with the commission field office handling the claim or the central office of the commission no later than the 15th day after receipt of the commission's order. A claimant may request a hearing by contacting the commission in any manner no later than the 15th day after receipt of the commission's order. The contesting party other than a claimant shall send a copy of the request by personal delivery or first class mail to the carrier and the other parties, including the claimant and attorney.
- (e) An attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a benefit contested case hearing shall request review by the appeals panel pursuant to the provisions of §143.3 of this title (relating to Requesting the Appeals Panel to review the Decision of the Hearing Officer).

- (f) The commission's order to pay attorney fees is binding during the pendency of a contest or an appeal of the order. Notice of a contest or an appeal shall not relieve the carrier of the obligation to pay according to the commission order.
- (g) If an attorney has been paid more than authorized by the final order of the commission, the commission shall order that the excessive amount be reimbursed.
- (h) If the final order of the commission or a court requires an attorney to reimburse funds, the reimbursement shall be made no later than 15 days after receipt of the final order by mailing or personally delivering a check as directed by the commission or a court.

The provisions of this §152.3 adopted to be effective February 22, 1991, 16 TexReg 774; amended to be effective June 1, 1992, 17 TexReg 3251; amended to be effective October 1, 1992, 17 TexReg 6365; amended to be effective April 20, 1994, 19 TexReg 2547.

§152.4 Guidelines for Legal Services Provided to Claimants and Carriers.

- (a) The guidelines outlined in this rule shall be considered by the commission along with the factors, and maximum fee limitations, set forth in the Texas Labor Code, §408.221 and §408.222 and applicable commission rules.
- (b) An attorney may request, and the commission may approve a number of hours greater than those allowed by these guidelines, if the attorney demonstrates to the satisfaction of the commission that the higher fee was justified based on the Texas Labor Code, §408.221 and §408.222.
- (c) The guidelines for legal services provided to claimants and carriers are as follows:

<u>Service</u>	<u>Maximum Total Hours</u>
1. a. initial interview and research	1.0
b. setting up file; completing and filing forms	0.5
2. Communications per month (with client, health care providers, other persons involved in the case)	2.5
3. Direct dispute resolution negotiation with the other party (per month)	3.0
4. Preparation and submission of an agreement or settlement	1.0
5. Participation in Benefit review conference	Actual time in BRC + 2.0
6. Participation in Benefit contested case hearing	Actual time in CCH + 4.0
7. Participation in administrative appeal process	5.0
8. Travel (per month)	Actual costs that are reasonable and necessary.

- (d) The maximum hourly rate for legal services shall be as follows. Hourly rate:

(1) Attorney -- \$150 and

(2) Legal assistant (not to include hours for general office staff) --\$50

The provisions of this §152.4 adopted to be effective February 22, 1991, 16 TexReg 774; amended to be effective April 20, 1994, 19 TexReg 2547.

§152.5. Allowable Expenses.

- (a) As part of the application for attorney fees, an attorney shall submit an itemized list of expenses incurred for the preparation and presentation of the client's case. The date, nature, and amount of the expense shall be clearly identified.
- (b) The commission shall allow those expenses necessary for the preparation and presentation of a person's claim or a carrier's defense before the commission, including:
 - (1) travel expenses, at the rate set for state employees by the legislature for state employees in the General Appropriations Act, if the attorney is required to attend a benefit review conference or hearing more than 25 miles from the attorney's office nearest to the location of the conference or hearing;
 - (2) expenses necessary to present a case at a hearing including subpoena costs, court reporter's fee, per diem witness fees incurred, and translator's fee;
 - (3) the cost of records necessary to prepare or present a claim or defense including copies of commission files, a record check performed by the commission, medical reports (except medical reports required to be provided by commission rule), and copies of certificates, licenses, and decrees necessary for perfecting a claim for death benefits;
 - (4) costs of long distance telephone calls to: the client, an attorney or other representative of the other party, health care providers, or others necessary to prepare the claim or defense;
 - (5) costs of collect long distance telephone calls from the client; and
 - (6) investigative services necessary to establish or dispute a claim.
- (c) The commission shall not allow as attorney expenses those expenses that are not necessary for the preparation and presentation of a party's individual claim or defense before the commission, including:
 - (1) attorney travel, except as permitted in subsection (b)(1) of this section;
 - (2) overhead costs of operating a law office including: rent, utilities, copies, fax, telecopier, postage, shipping, local telephone calls, long distance calls to the commission, and salaries for general office staff; and
 - (3) medical reports and hospital records that commission rules require to be sent to the claimant and carrier.
- (d) An attorney's payment of out-of-pocket expenses for items listed in subsection (b) of this section does not constitute a loan to the client as prohibited by the Texas Workers' Compensation Act, §10.03.

The provisions of this §152.5 adopted to be effective February 22, 1991, 16 TexReg 774.