

By: Jackson

H.B. No. 3724

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the amount of attorney's fees awarded to a claimant's  
3 counsel in certain workers compensation proceedings.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 408.221, Labor Code, is amended by  
6 amending Subsections (b) and (c) to read as follows:

7 (a) An attorney's fee, including a contingency fee, for  
8 representing a claimant before the division or court under this  
9 subtitle must be approved by the commissioner or court.

10 (b) Except as otherwise provided by Subsection (c) or  
11 Section 408.147(c), an attorney's fee under this section is based  
12 on the attorney's time and expenses according to written evidence  
13 presented to the division or court and~~[. Except as provided by~~  
14 ~~Subsection (c) or Section 408.147(c),]~~ the attorney's fee shall be  
15 paid from the claimant's recovery.

16 (c) An insurance carrier that seeks judicial review under  
17 Subchapter G, Chapter 410, of a final decision of the appeals panel  
18 regarding compensability or eligibility for, or the amount of,  
19 income or death benefits is liable for reasonable and necessary  
20 attorney's fees as provided by Subsection (d) incurred by the  
21 claimant as a result of the insurance carrier's appeal if the  
22 claimant prevails on an issue on which judicial review is sought by  
23 the insurance carrier in accordance with the limitation of issues  
24 contained in Section 410.302. If the carrier appeals multiple

1 issues and the claimant prevails on some, but not all, of the issues  
2 appealed, the fee ~~[court]~~ shall be apportioned to ~~[and]~~ award  
3 fees to the claimant's attorney only for the issues on which the  
4 claimant prevails. In making that apportionment, the ~~[court]~~ jury,  
5 or trial judge when jury is not requested, shall consider the  
6 factors prescribed by Subsection (d). ~~[This subsection does not~~  
7 ~~apply to attorney's fees for which an insurance carrier may be~~  
8 ~~liable under Section 408.147.]~~ An award of attorney's fees under  
9 this subsection is not subject to commissioner rules adopted under  
10 Subsection (f).

11 (d) In approving an attorney's fee under this section, the  
12 commissioner or court shall consider:

- 13 (1) the time and labor required;
- 14 (2) the novelty and difficulty of the questions  
15 involved;
- 16 (3) the skill required to perform the legal services  
17 properly;
- 18 (4) the fee customarily charged in the locality for  
19 similar legal services;
- 20 (5) the amount involved in the controversy;
- 21 (6) the benefits to the claimant that the attorney is  
22 responsible for securing; and
- 23 (7) the experience and ability of the attorney  
24 performing the services.

25 (e) The commissioner by rule or the court may provide for  
26 the commutation of an attorney's fee, except that the attorney's fee  
27 shall be paid in periodic payments in a claim involving death

1 benefits if the only dispute is as to the proper beneficiary or  
2 beneficiaries.

3 (f) The commissioner by rule shall provide guidelines for  
4 maximum attorney's fees for specific services in accordance with  
5 this section.

6 (g) An attorney's fee may not be allowed in a case involving  
7 a fatal injury or lifetime income benefit if the insurance carrier  
8 admits liability on all issues and tenders payment of maximum  
9 benefits in writing under this subtitle while the claim is pending  
10 before the division.

11 (h) An attorney's fee shall be paid to the attorney by  
12 separate draft.

13 (i) Except as provided by Subsection (c) or Section  
14 408.147(c), an attorney's fee may not exceed 25 percent of the  
15 claimant's recovery.