

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-056 (A)

**ANGELA ASHTON,
Claimant,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF MOTOR VEHICLES,
Employer.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 DEC 8 AM 10 21

In Re An October 9, 2015 Application for Attorney's Fees
AHD No. PBL 13-045, DCP No. 30081122563-0001

(Corrected December 8, 2015)

Harold L. Levi for Claimant
Andrea G. Comentale for Employer

Before JEFFREY P. RUSSELL, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL for the Compensation Review Board.

CORRECTED ORDER AWARDING AN ATTORNEY'S FEE

On October 9, 2015, Claimant's counsel, Harold L. Levi, filed a fee application requesting the Compensation Review Board (CRB) assess against Employer an attorney's fee for 57.25 hours, billed at \$240.00 per hour, asserted to have been performed by Claimant's counsel in this appeal before the CRB. The fee requested consisted of \$7,887.77, which represents 20% of \$39,443.87 actual indemnity and medical benefits asserted to have been paid to Claimant as of the date of the fee application, and 20% of Claimant's future benefits as they are paid to Claimant, up to the total amount of \$13,740.00.

On October 14, 2015, the CRB issued an "Order to Show Cause Re: October 9, 2015 Fee Application", in which Employer was directed to show cause why an Order for fees in the amount of \$7,888.77 and 20% of future benefits as they are paid to Claimant, up to a total attorney's fee of \$13,740.00, should not be approved, awarded and assessed as requested by Claimant's counsel, said response to be filed on or before Friday, October 23, 2015.

On October 23, 2015, Employer filed "Employer's Opposition to Fee Petition", in which Employer argues a fee award should not be entered in the amount requested because (1) the amount sought to be awarded exceeds 20% of the actual benefits secured, because the combined amount sought in the CRB fee application and a fee application filed with the Administrative Hearings Division (AHD) in connection with this same claim is \$34,620.00, while the actual benefits secured are \$39,443.87, making the request for fees equal to 88% of the actual benefits secured; and (2) the billing statement contains entries totaling 6 hours that were also included in the fee application filed with AHD and thus are duplicative and ought not be awarded by the CRB.

On October 25, 2015, Claimant's counsel filed "Claimant's Reply to Employer's Opposition to Fee Petition", in which it is argued that, as "stated in both his CRB Petition and OHA [sic] fee petitions" counsel was seeking an award of 20% of the benefits accrued as of the date of the respective fee applications, with the balance to be paid over time in the amount of 20% of future benefits as they come due and are paid by Employer to Claimant, up to the total amount of the fees awarded.

Counsel argued further that the time entries which Employer asserts are duplicative are clearly entries for work performed before the CRB, and therefore should be approved. Counsel does not contest Employer's assertion that the same time entries were included in the AHD fee application.

As Counsel for Claimant points out, the award of an attorney's fee in excess of 20% of benefits accrued as of the date of the fee petition is not proscribed where benefits are ongoing, and the fee award is paid over time as additional benefits are paid to a claimant, up until the entire approved fee is paid, not to exceed 20% of the total benefits secured through counsel's efforts. This has been the enunciated law for more than six years. *See, Martin v. D.C. Department of Corrections*, CRB No. 08-212, AHD No. PBL 08-004 (April 14, 2009). Employer does not mention *Martin* in its opposition, nor does Employer provide any basis for a departure from this long established rule. We reject Employer's first argument.

Regarding the second argument, Employer does not contest that the time entries that it claims are duplicative are nonetheless accurate billing entries for work performed before the CRB. Thus, they are properly awardable in connection with this fee application. If the entries are indeed identical and duplicative of entries included in the AHD fee application, the proper place to oppose an award based upon them is in connection with the AHD fee application.

Employer raises no additional objections to the fee application regarding the reasonableness of the time entries, the hourly rate of the fee request, or any other basis.

Accordingly, the fee application is GRANTED, and a fee in the total amount of \$13,740.00 is assessed against Employer for work performed before the CRB, with \$7,888.77 payable based upon benefits secured as of the date of the fee petition, and the balance to be paid as additional benefits are paid to Claimant based upon 20% of such benefits as they are paid, subject to the

proviso that the total fee for which Employer is liable for all services rendered before AHD and CRB shall not exceed the 20% limitation set forth in D.C. Code § 1-623.24 (b)(2).

So ordered.