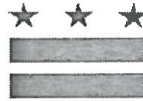


GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-091

ANGELA TILGHMAN,  
Claimant-Petitioner,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,  
Self-Insured Employer-Respondent.

Appeal from a June 28, 2016 Order Denying Attorney's Fees  
by Administrative Law Judge Fred D. Carney, Jr.  
AHD No. PBL 14-028, DCP No. 0468-WC-11-050120

(Decided November 18, 2016)

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

Before GENNET PURCELL, LINDA F. JORY, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

GENNET PURCELL for the Compensation Review Board.

**DECISION AND REMAND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY

This matter is an appeal of an Order Denying Attorney's Fees ("Order") that was issued on June 28, 2016. The Order was issued following Claimant having prevailed at a formal hearing before an Administrative Law Judge ("ALJ") in the Administrative Hearings Division ("AHD") of the Department of Employment Services on December 1, 2014. A Compensation Order ("CO") issued by the ALJ that awarded Claimant the retroactive and prospective restoration of her terminated medical benefits as Employer had not proven that Claimant failed to accept a modified duty position sufficient to warrant the termination of her medical benefits for her accepted workplace injury. *Tilghman v. District of Columbia Public Schools*, AHD No. PBL 14-028, (April 28, 2016). Employer did not appeal the CO. The CO became final on May 28, 2016.

On May 11, 2016, counsel for Plaintiff filed a Fee Petition ("Fee Petition") seeking \$16,740.00 in attorney's fees for services he performed before AHD related to the CO. The Fee Petition

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averred that certain medical expenses and out-of-pocket payments represented benefits secured to Claimant as a result of the successful prosecution of her claim for wage loss and medical treatment for her causally-related injuries, and requested an order awarding \$16,740.00 in attorney's fees related thereto. The ALJ issued an Order to Show Cause directing Employer to file any objection it has to the requests as set forth in the Fee Petition.

On June 21, 2016, Employer filed its Response to Order to Show Cause and Opposition to Fee Petition, asserting that Claimant's counsel had not provided any evidence of the amount of actual benefits secured and without such evidence, AHD would be unable to ensure that a calculation of attorney's fees did not exceed the statutory restrictions imposed by D.C. Code § 1-623.27 (b)(2). Employer also asserted that Claimant did not establish that her knee replacement surgery and her subsequent medical treatment were related to her June 3, 2011 workplace injury.

On June 28, 2016, the Order which is the subject of this appeal was issued by AHD.

On July 15, 2016, Claimant's counsel timely filed a Petition for Review of Order Denying Attorney's Fees ("Claimant's Brief") with the Compensation Review Board ("CRB").

On August 16, 2016, Employer filed its Respondent's Opposition to Petitioner's Petition for Review of Order Denying Attorney's Fee ("Employer's Brief").

On August 24, 2016, Claimant filed a Reply Memorandum Regarding the Petition for Review of Order Denying Attorney's Fee ("Claimant's Reply Brief").

#### ANALYSIS

As an initial matter, in our review of an appeal of an Order that is not based upon an evidentiary record, must be affirmed by the CRB unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See* 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW § 51.03 (2001).

Claimant's counsel asserts he is entitled to an attorney fee based on the reimbursements Claimant has been paid, and other medical costs incurred to date as benefits secured as a result of her successful claim. Claimant's counsel asserts further that his Fee Application specifically referenced exhibits submitted at the formal hearing, Claimant's testimony, and the records evidencing expenditures totaling \$68,813.57 paid by Blue Cross Blue Shield ("BCBS"), Claimant's medical insurer. Claimant's counsel contends he has adequately demonstrated that actual benefits secured as a result of the formal proceedings, at least as to \$14,617.97 (20% of \$73,089.86 (the sum of \$68,813.57 paid by BCBS and the \$4,276.29 paid by Claimant)). Claimant's counsel argues these amounts are "not just estimates, but rather precise amounts actually paid." Claimant's Brief at 8.

Specifically, the Fee Petition asserts:

Given that Employer's IME acknowledges [Claimant's] workplace injury to be the basis for her surgeries and her ongoing treatment plan, it is clear that the

actual benefits Counsel secured for Petitioner as a result of the formal hearing include those medical costs which Petitioner showed both BCBS and Petitioner herself to have expended after the termination of her benefits. Counsel and [Claimant] have adequately demonstrated the actual benefits secured as a result of the formal proceeding, at least as to \$14,617.97 (20% of \$73,089.86 (the sum of \$68,813.57 paid by BCBs and the \$4,276.29 paid by Petitioner)).

Claimant's Brief at 8.

Employer asserts that the argument that Claimant incurred causally related medical expenses in excess of \$87,440.32 is without explanation as to whether those services were for casually related medical treatments, and is without merit.

Employer explains:

There is absolutely no medical evidence of record establishing that Claimant's October 2014 left knee replacement surgery and subsequent treatment was or is causally related to her accepted left knee contusion. While Dr. Dououghigh recommended total knee arthroplasty on August 1, 2014 (CE 13) for pain associated with osteoarthritis, he did not causally relate that to the 2011 contusion. Additionally, both the Independent Medical Examiner, Dr. Waldman, and Claimant's treating physicians, Dr. Cohen and Nelmes, determined in March of 2014 that Claimant had reached maximum medical improvement and needed no further medical treatment. Employer's Exhibits 3 & 4.

\* \* \*

Additionally, the documents provided Petitioner's Exhibits 15 and 15A and attached to her Fee Petition reflect numerous services and prescriptions without any explanation as to whether these services and expenses were for causally related medical treatments. Without this explanation, it is impossible for the AHD to merely look at the collection of documents provided by the Petitioner and understand what medical services actually require reimbursement pursuant to the CO and in what amount.

Employer's Brief at 3, 4.

Indeed the law is clear with regard to the award of attorney's fees in this jurisdiction. An attorney fee award may not exceed 20% of the actual benefit secured. D. C. Code § 1-623.27 (b)(2). Conversely however, the law also requires that in denying the award of attorney's fees, an ALJ must give analytical consideration or make foundational findings with respect to the Petition, or with regard to Employer's opposition. *Carter v. D.C. Department of Corrections*, CRB Appeal Nos. 10-084 and 10-023 (September 14, 2011).

Claimant's counsel argues that in the Fee Petition, the Order did not state the basis or rationale for its conclusion or demonstrate "any analytical consideration of the grounds for its denial."

Claimant's Brief at 5. On this point we agree. The Order is perfunctory in its explanation of the reasoning for the denial of the Petition.

Indeed, the District of Columbia Municipal Regulations ("DCMR") promulgated in accordance with Section 1-623.27 (b)(2) of the Act specifically clarifies an ALJ's role in the award of attorney's fees and require a broad-based consideration of, *inter alia*, the complexity of the claim, and the amount of accrued and potential future payments to a claimant. 7 DCMR § 109.5. *See also Amaechi v. D.C. Department of Corrections*, CRB No. 08-134 (October 9, 2008) (remanded for issuance of an order premised on, and discussing, the specific factors in the Act and regulations).

Without the benefit of an explanation or a critical analysis of the evidence referenced in counsel's Fee Petition, we are unable to evaluate, and weigh against the standard, the ALJ's reasoning for denying the an attorney fee award. Where the basis and rationale for a decision cannot be discerned, the failure to do so renders the order unsupported, and therefore arbitrary, capricious and contrary to the law. As such, we vacate the Order and remand, for a re-analysis of Claimant counsel's Fee Petition and the supporting evidence, and for a clearer determination of the ALJ's order to grant or deny Claimant's counsel a fee award.

#### CONCLUSION AND ORDER

The Order Denying Attorney's Fee is arbitrary, capricious, and not in accordance with the law and is hereby, VACATED, and REMANDED to the Administrative Hearings Division for reanalysis and for a determination premised upon and discussing the specific factors enunciated in the Comprehensive Merit Personnel Act and regulations cited herein.

*So ordered.*