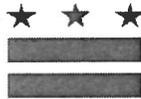


**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 13-042(A)(1)**

**In Re: Application for Approval of an Attorney's Fee Assessment**

**BERTRAN LONG,  
Claimant**

**v.**

**DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,  
Employer.**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 OCT 2 PM 2 00

**AHD No. PBL 08-087B, DCP No. 300991266863**

(Issued October 2, 2015)

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

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

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

**ATTORNEY FEE ORDER**

Following a Formal Hearing, an administrative law judge ("ALJ") issued a Compensation Order awarding Claimant disability benefits and payment of medical benefits. *Long v. D.C. Department of Corrections*, AHD No. PBL 08-087B, DCP No. 300991266863 (February 28, 2013). Employer appealed and the Compensation Review Board ("CRB") affirmed the Compensation Order. *Long v. D.C. Department of Corrections*, CRB No. 13-042, AHD No. PBL 08-087B, (November 12, 2013). Employer appealed the CRB decision to the District of Columbia Court of Appeals (DCCA). On September 23, 2014 the DCCA reversed the CRB's Decision and Order, and remanded the case to the ALJ for further proceedings. *Long v. D.C. Department of Corrections*, No. 13-AA-1399 (September 23, 2014). A Compensation Order on Remand was issued on June 9, 2014 awarding Claimant disability benefits and payment of medical benefits. *Long v. D.C. Department of Corrections*, AHD No. PBL 08-087B, DCP No. 300991266863 (June 9, 2015).

On June 18, 2015 Claimant's attorney filed an application for an attorney's fee, requesting the CRB assess an attorney's fee against Employer in the amount of two thousand one hundred sixty dollars (\$2,160.00) for 9 hours of work, billed at \$240.00 per hour that was asserted to have been performed by Claimant's counsel in this appeal before the Compensation Review Board. The request asserted Claimant was awarded approximately \$65,000.00 in back pay.

On June 29, 2015, Employer opposed the fee request, arguing that since the Claimant was unsuccessful in prosecuting the case in front of the CRB, the fee requested by his counsel should be denied pursuant to *Atkins v. D.C. Department of Corrections*, CRB No. 14-153(A) (May 22, 2015).<sup>1</sup>

In *Gruenwald v. D.C. Housing Authority*, CRB No. 15-128, AHD No. PBL. 13-039 (October 1, 2015), the CRB noted:

An award of an attorney's fee against employer is authorized upon the successful prosecution of a claim before AHD or as a result of subsequent court appeal. D.C. Code § 1-623.27(b)(2) provides:

If a person utilizes the services of an attorney-at-law in the successful prosecution of his or her claim under § 1-623.24(b) or before any court for review of any actions, award, order or decisions, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee . . . which fee award shall be paid directly by the Mayor or his or her designee to the attorney for the claimant. . . .

D.C. Code § 1-623.27(b)(1), defines what is meant by the "successful prosecution" of a claim:

For the purposes of this subsection, the term 'successful prosecution' means obtaining an award of compensation that exceeds the amount that was previously awarded, offered or determined. The term 'successful prosecution' includes a reinstatement or partial reinstatement of benefits which are reduced or terminated.

The CRB finds that the determination as to whether there has been a successful prosecution is a determination that is made when all appeals of the claim before the ALJ have been concluded. When that determination is made, a fee may be awarded for all adjudicatory levels.

We agree with, and adopt as our own, the holding of the United States Department of Labor:

In general, where there has been a successful prosecution of the claim, a claimant's attorney is entitled to compensation for all necessary work performed. Counsel is entitled to fees for all services rendered claimant at each level of the adjudication

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<sup>1</sup> As the Employer promptly opposed the fee request, an Order to Show Cause was not issued by the CRB.

process, even if unsuccessful at a particular level, so long as counsel is ultimately successful in prosecuting a claim. However, where there has not been a successful prosecution, counsel is not entitled to a fee.

*Clark v. Director, Office of Workers' Compensation Programs*, 9 BLR 1-211 (1986),

The CRB acknowledges that our decision represents a departure from prior authority as set forth in *Atkins v. D.C. Department of Corrections*, *supra*, and *Lyles v. D.C. Department of Mental Health*, CRB No. 11-099(A) (February 13, 2013).

We have considered the matter further, and have come to the conclusion that deciding whether there has been a “successful prosecution” must take into account the final outcome of a claim, not the result of litigation at any given stage prior to the final determination.

Were it otherwise, there would be the illogical situation where a claimant’s attorney would be denied an attorney’s fee when the claim for benefits was denied at both AHD and the CRB, but the denial of benefits was ultimately reversed by the District of Columbia Court of Appeals. Similarly, under the prior authority, an attorney would be awarded a fee if a claimant prevails at AHD but the award of benefits is ultimately reversed by the CRB and the reversal is upheld by the Court of Appeals. The decision today avoids these incongruous outcomes.

In the case *sub judice*, although Claimant’s attorney was not successful before the CRB, after an appeal to the DCCA and subsequent remand, a COR was issued which awarded benefits. That COR was not appealed and became a final order. Thus, pursuant to *Gruenwald*, while the CRB did not find in Claimant’s favor, Claimant was ultimately successful in prosecuting the claim when Claimant received benefits.

As Employer raises no other issues, Claimant’s request for a fee, payable by the Employer, is granted, subject to the condition that the total attorney fees awarded and payable for all work performed before the AHD, the CRB and the DCCA, is limited to and does not exceed twenty percent (20%) of the actual benefits secured through the efforts of claimant’s counsel with respect to the issues arising from CRB No. 13-042, AHD No. PBL 08-087B and DCP No. 300991266863.

*So ordered.*