

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-095

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

**DONALD POOLE,
Claimant**

v.

**BENEDICT METAL WORKS and
CINCINNATI INSURANCE COMPANY,
Employer and Carrier**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 AUG 20 AM 8 36

Joel E. Ogden for the Employer
Allen J. Lowe for the Claimant

Before HEATHER C. LESLIE, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*

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

ORDER DENYING ATTORNEY'S FEE

On July 11, 2014, Claimant's attorney filed an application for an attorney's fee, requesting the Compensation Review Board (CRB) assess an attorney's fee against Employer and Carrier in the amount of three thousand three hundred sixty dollars (\$3,360.00) for 14 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 was silent as to what statutory authority was relied upon.

Employer filed an opposition to the Application for Attorney's Fee on July 25, 2014, arguing several points, notably that an award of an attorney's fee to be assessed against the Employer was not proper based upon the procedural history of the case.

The procedural history, as summarized in our recent Order Denying Employer's Motion for Ruling on Balance of Previously Appealed Issues, CRB No. 12-095(R)(1), AHD No. 11-062 (June 17, 2014), is as follows:

On May 25, 2012, an Administrative Law Judge (ALJ) in the Hearings and

Adjudication section of the District of Columbia Department of Employment Services (DOES) entered an award in behalf of the claimant providing for temporary total benefits from December 20, 2010, to the present and continuing and for causally related medical expenses.

The employer and carrier appealed the award asserting that the ALJ erred in her finding that Claimant provided timely notice of his injury and in her finding that Claimant credibly testified regarding his injury, his post-injury symptoms and the effect of the injury on his physical capabilities.

On July 25, 2012, the CRB issued a Decision and Order in which it held Claimant did not give timely notice. The CRB vacated the award of temporary total disability benefits while affirming the award of causally related medical benefits.

The CRB did not decide whether the ALJ correctly found Claimant's testimony credible:

As notice was untimely, the Claimant cannot recover wage loss benefits under the statute. Thus, the Employer's other assignments of error are rendered moot.

CRB No. 12-095 at 5.

On October 10, 2013, the District of Columbia Court of Appeals (DCCA) reversed that part of the CRB's decision that vacated the ALJ's the award of temporary total disability benefits and remanded the case to the CRB with the following instruction:

Accordingly, for the foregoing reasons, we reverse in part the order of the Compensation Review Board and remand the case for reinstatement of the ALJ's award of temporary total benefits.

77 A.3d 460, 469.

On November 1, 2013, the CRB entered an Order which stated in pertinent part:

Therefore, consistent with the remand instructions from the District of Columbia Court of Appeals, the ALJ's award of temporary total benefits from December 20, 2010, to the present and continuing is hereby reinstated.

On May 28, 2014, [Employer] filed the present motion which acknowledged the entry of the award for temporary total disability benefits and further stated:

Given the fact that only one issue has been addressed and resolved by the CRB and the Court of Appeals, it is appropriate for the CRB to issue a ruling on the remaining issue of credibility.

On June 9, 2014, the Claimant filed its Opposition to Employer's Motion for Ruling on Balance of Previously Appealed Issues.

On June 17, 2014, the CRB denied Employer's Motion for Ruling on Balance of Previously Appealed Issues as not only was it untimely filed pursuant to 7 DCMR § 268.1,¹ but also the Board determined the remand instructions from the DCCA constrained the CRB from ruling upon the Employer's motion. *Id.*

We need not reach Employer's argument as we find the Application for Attorney's Fee to be untimely. In reaching this determination we note that 7 DCMR § 7-269.2 states,

An application to the Board for the award of an attorney's fee (including, where appropriate, request for reimbursement of costs) for legal work performed before the Board on behalf of a successful claimant shall be filed with the Board within ninety (90) calendar days after the claim for benefits becomes final and all appeals have been exhausted.

As with the CRB's Order Denying employer's Motion for Ruling on Balance of Previously Appealed Issues, the CRB's November 1, 2013 Order reinstating temporary total benefits from December 20, 2010, to the present and continuing pursuant to the DCCA decision became final and all appeals were exhausted when it was not appealed within thirty days. Claimant had 90 days from the date the claim became final to file an Application for an Attorney's Fee. As Claimant filed Application for Attorney's Fee to be assessed against the Employer on July 14, 2014, well outside of the 90 day time limit, Claimant's request is untimely and is DENIED.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE,
Administrative Appeals Judge

August 20, 2014

DATE

¹7 DCMR § 268.1 states: Any party may, within ten (10) calendar days from the date shown on the certificate of service of the Decision and Order of the Board or of any order issued by the Board, file a request for reconsideration thereof with the Clerk of the Board.