

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
DIRECTOR

COMPENSATION REVIEW BOARD

CRB 14-079

**FOLASHADE OGUNDAIRO,
Claimant,**

v.

**COASTAL INTERNATIONAL SECURITY and
TRAVELERS INDEMNITY COMPANY,
Employer and Carrier.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 NOV 25 PM 12 43

Appeal of a May 21, 2014 Order Denying an Attorney’s Fee Request
issued by Administrative Law Judge Gerald D. Roberson
AHD No. 13-516, OWC No. 689472

Eric M. May *pro se*
Michael J. Kitzman for Claimant
Joel E. Ogden for Employer and Carrier

Before Lawrence D. Tarr, *Chief Administrative Appeals Judge*, Heather C. Leslie and Jeffrey P. Russell, *Administrative Appeals Judges*.

Lawrence D. Tarr for the Compensation Review Board.

DECISION AND REMAND ORDER

This case is before the Compensation Review Board (“CRB”) on the request for review filed by Claimant’s former attorney, Eric M. May, challenging the May 21, 2014 Order issued by an Administrative Law Judge (“ALJ”) in the Administrative Hearings Division of the Department of Employment Services (“DOES”). In that Order the ALJ determined Mr. May (“Attorney May”) was not entitled to any attorney’s fee for representing Ms. Folashade Ogundairo (“Claimant”).

FACTS OF RECORD AND PROCEDURAL HISTORY

The ALJ decided this matter without a formal hearing so there is no transcript. Attorney May filed a Memorandum of Points and Authorities that asserted certain facts regarding his review

request. Neither claimant nor her present attorney filed any opposition to Attorney May's statement of facts.

Attorney May was hired by Claimant on August 29, 2013, to represent her in a dispute concerning her workers' compensation claim for an accident at work on March 12, 2012. Claimant discharged Attorney May on November 19, 2013, and hired a new attorney who resolved the dispute twelve days after Attorney May was discharged.

The parties agreed to a compromise that resulted in Claimant receiving temporarily total disability benefits from August 13, 2013 through December 2, 2013. As a result, Claimant received \$11,646.96 in indemnity benefits.

On December 3, 2013, Attorney May petitioned the ALJ for an attorney fee. Attorney May sought an attorney's fee of \$ 2,376.00, based on 9.9 hours of service at the rate of \$240 per hour.

In support of his petition, Attorney May submitted a statement of services that showed during the approximately three months he represented Claimant, he filed an Application for Formal Hearing, attended depositions of Claimant and Dr. Iqbal, prepared a request for document production, reviewed Employer's response to the document request, prepared a Joint Prehearing Statement, prepared interrogatory answers, reviewed medical records, spoke with Claimant several times by telephone, and conferred with her once.

On December 18 2013, the ALJ issued an Order denying Attorney May's entire fee request. The ALJ held:

In the instant matter, Counsel's fee petition fails to satisfy the requirements set forth in CDCR §7- 224.2 as no benefits were secured in this matter. Additionally, Counsel fails to identify a party responsible for the fee.

Attorney May filed a Motion for Reconsideration with the ALJ on December 26, 2014. Attorney May averred that he was entitled to a fee because the resolution of the dispute came about "almost entirely" through his efforts, that he learned Claimant received \$11,646.96 in workers' compensation benefits, and that he sought a fee assessed against Claimant. Attorney May amended petition to request \$ 2,329.34, which is 20% of the entire amount claimant received. No immediate action was taken on the Motion for Reconsideration.

Attorney May wrote the ALJ on April 23, 2014, asking that the ALJ rule on his reconsideration motion. On May 21, 2014, the ALJ denied Attorney May's Motion for Reconsideration.

The ALJ ruled

[Attorney May's] petition for such fees did not meet the necessary requirements for approval as set out by the relevant statute. *See* CDCR §7-224.2. Briefly stated, during Mr. May's representation of Claimant, Claimant was not awarded any compensation benefits. Additionally, a compensation order must issue and

become final, and grant compensation to a claimant in order for that claimant's attorney to be eligible for attorney fees. *See*, D.C. Code §32-1530.

Accordingly, since no compensation order issued in this case, no attorney fees is justified.

Attorney May timely filed for review of the ALJ's Attorney May 21, 20014 Order denying the Motion for Reconsideration. No opposition has been filed with the CRB.

STANDARD OF REVIEW

In this case, Attorney May appeals an Order issued in response to a motion. Therefore, the CRB must affirm that order unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See*, 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW § 51.03 (2001).

ANALYSIS

Attorney fees in AHD private sector workers' compensation cases are controlled by D.C. Code § 32-1530 and 7 DCMR § 224.2 and 7 DCMR § 224.3.¹

Because the fee request does not seek an award against the employer or carrier, the relevant portions of § 32-1530 are subsections (c) and (f):

(c) In all cases, fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the Mayor or any court for review of any actions, award, order or decision, the Mayor or court may approve an attorney's fee for the work done before him or it, as the case may be, by the attorney for the claimant. An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation due under an award, and the Mayor or court shall fix in the award approving the fee such lien and manner of payment.

(f) At no time shall an attorney's fee be approved in excess of 20% of the actual benefit secured through the efforts of the attorney. This provision applies to all benefits secured through the efforts of an attorney, including settlements provided for under this chapter.

7 DCMR § 224.2 provides:

In determining whether to award attorney fees and the amount, if any, to be awarded, the following factors shall be considered:

¹ The CRB will use the citation format used by the District of Columbia Court of Appeals when referring to the Code of D.C. Municipal Regulations, *See* § 6.1(c) *D.C. Court of Appeals Citation and Style Guide* (Revised, September, 2009]

- (a) The nature and complexity of the claim including the adversarial nature, if any, of the proceeding
- (b) The actual time spent on development and presentation of the case;
- (c) The dollar amount of benefits obtained and the dollar amount of potential future benefits resulting from the efforts of an attorney;
- (d) The reasonable and customary local charge for similar services; and
- (e) The professional qualifications of the representative and the quality of representation afforded to employee.

7 DCMR § 224.3 states in part:

An application for attorney fees shall contain the following:

- (a) A complete statement of the extent and character of the necessary work done, described with particularity as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing the work;
- (b) The normal billing rate in the area for the work; and
- (c) The hours devoted by each person to each category of work.

The ALJ denied the fee because there was no final compensation order granting benefits and because Claimant was not awarded compensation benefits during the time Attorney May represented her. The CRB finds that while a claimant must receive benefits before an attorney fee may be awarded, there does not have to compensation order granting benefits nor must the benefits be received during the time an attorney represented the claimant if, as here, the attorney's actions played a significant role in receiving the benefits.

There is nothing in either the Code or the Regulations that requires a "compensation order" for an attorney fee award. D.C. Code §32-1530 states that a fee may be awarded if "any proceedings are had." Here, Attorney May participated in "proceedings"—he filed an Application for Formal Hearing and a Joint Pre-Hearing Statement, and he participated in pre-hearing discovery proceedings.

While the pertinent code section and regulations do not specifically require that a claimant be awarded compensation benefits as a condition precedent for an attorney fee award, the claimant must receive benefits. Section 32-1530 (f) says that a fee may be awarded if benefits are paid by a settlement that was secured through the efforts of an attorney. D.C. Code § 32-1530-(f) and 7 DCMR § 224.5 limit the attorney fee to 20% "of the actual benefit secured through the efforts of the attorney" thereby implying that a claimant must receive benefits before an attorney may receive a fee award.

Therefore, the CRB finds that an attorney may receive a fee award so long as the attorney's representation resulted in a claimant receiving benefits. Here, no opposition challenged Attorney May's representation that it was "almost entirely" through his efforts that claimant received benefits.

No doubt the record could support not awarding the full request since Claimant's present attorney prepared and filed exhibits for the formal hearing and was the attorney who was able to reach the agreement with Employer that resulted in the joint voluntary dismissal of the application for hearing and Claimant voluntarily receiving benefits. However, the ALJ's denial of any fee is not in accordance with the law.

CONCLUSION

The ALJ's May 21, 2014, Order is VACATED because it is not supported by substantial evidence or in accordance with the law.

This matter is REMANDED to the ALJ for a new decision consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Lawrence D. Tarr
LAWRENCE D. TARR
Chief Administrative Appeals Judge

November 25, 2014
DATE