

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

CRB No. 13-083(A)(1)

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

**MAURICE GALLOWAY,
Claimant,**

v.

**WASTE MANAGEMENT and GALLAGHER BASSETT SERVICES
Employer/Insurer**

Richard W. Galiher, Esquire, for the Claimant
Zachary L. Erwin, Esquire for the Employer

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

HEATHER C. LESLIE for the Compensation Review Board.

ORDER AWARDING AN ATTORNEY'S FEE

On October 10, 2013, Claimant's attorney filed a Motion for Reconsideration of Attorney Fee Denial,¹ requesting the Compensation Review Board (CRB) award a lien against compensation pursuant to D.C. Code § 32-1530(b)² to be paid out of Claimant's ongoing wage loss benefits totaling two thousand nine hundred ninety three dollars and thirty six cents (\$2,993.36) for 12.5 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.

A review of the evidentiary file reveals a Compensation Order was issued on June 5, 2013 which granted the Claimant's request for disability benefits, with a credit to the Employer for unemployment benefits received and wages earned,³ The Compensation Order denied the Claimant's request for penalties to be assessed against the Employer.

The Employer appealed to the Compensation Review Board. In a Decision and Order (DRO), the CRB affirmed the CO.⁴ That DRO was issued on September 3, 2013.

¹ The CRB denied counsel's prior request for an attorney's fee on October 2, 2013 as the attorney fee request was premature pursuant to 7 DCMR § 7-270.

² Counsel acknowledged that the Claimant did not prevail at the Informal Conference.

³ *Galloway v. Waste Management*, AHD No. 10-133A, OWC No. 665373 (June 5, 2013).

⁴ *Galloway v. Waste Management*, CRB No. 13-083, AHD No. 10-133A (September 3, 2013).

D.C. Code § 32-1530(b) states,

If the employer or carrier pays or tenders payment of compensation without an award pursuant to this chapter, and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the Mayor shall recommend in writing a disposition of the controversy. If the employer or carrier refuse to accept such written recommendation, within 14 days after its receipt by them, they shall pay or tender to the employee in writing the additional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation and thereafter utilizes the services of an attorney-at-law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation. The foregoing sentence shall not apply if the controversy relates to degree or length of disability, and if the employer or carrier offers to submit the case for evaluation by physicians employed or selected by the Mayor, as authorized in §32-1507(e), and offers to tender an amount of compensation based upon the degree or length of disability found by the independent medical report at such time as an evaluation of disability found by the independent medical report at such time as an evaluation of disability can be made. If the claimant is successful in review proceedings before the Mayor or court in any such case, an award may be made in favor of the claimant and against the employer or carrier for a reasonable attorney's fees for claimant's counsel in accordance with the above provisions. In all other cases any claim for legal services shall not be assessed against the employer or carrier.

Upon careful review of the fee application, and in consideration of D.C Code § 32-1530 *et seq.*, 7 DCMR §§ 224 and 269 and the May 12, 2005 *Department of Employment Services Policy Directive Clarifying the Award of Attorney Fees in Workers' Compensation Cases*, it is hereby **ORDERED**:

Subject to the condition that the total attorney fees awarded and payable for all work performed before the Department of Employment Services' Office of Workers' Compensation, Administrative Hearings Division, and the Compensation Review Board, 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 OWC No. 665373, AHD No. 10-133(a), and CRB No. 13-083, as provided by D.C. Official Code § 32-1530(f) and 7 DCMR § 224, Claimant's counsel's request for an attorney's fee in the total sum of two thousand nine hundred ninety three dollars and thirty six cents (\$2,993.36) for work asserted to have been performed by

Claimant's counsel in this appeal before the Compensation Review Board is approved as a lien against compensation to be paid out of Claimant's ongoing wage loss benefits.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE,
Administrative Appeals Judge

October 29, 2013
DATE