GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD

(202) 671-1394-Voice
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CRB No. 07-96

GWENDOLYN BECKWITH,

Claimant – Petitioner

v.

PROVIDENCE HOSPITAL,

Self-Insured Employer –Respondent.

Appeal from an Order of
Administrative Law Judge Terri Thompson Mallett
AHD No. 06-139, OWC No. 615744

Jessica G. Bhagan, Esquire for the Petitioner

Jeffrey W. Ochsman, Esquire for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge,* FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges.*

FLOYD LEWIS*, Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).[1]

[1] Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

BACKGROUND

This appeal follows the issuance of an Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on April 6, 2007, the Administrative Law Judge (ALJ) denied the request by Claimant-Petitioner (Petitioner) for approval of an attorney's fee in part and awarded an attorney's fee in the amount of $1,342.50. Petitioner now appeals that Compensation Order.

As grounds for this appeal, Petitioner alleges that the ALJ's decision is not supported by substantial evidence and is not in accordance with the law.

ANALYSIS

As an initial matter, the Compensation Review Board (CRB) as established by the Act and as contained in the governing regulations, must affirm an Attorney's Fee Award issued by AHD or the Office of Workers Compensation (OWC) unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. CRB Rules of Practice and Procedure, Chapter 2, 7 D.C.M.R. §266.4; *see also* Stein, Mitchell & Mezines, ADMINISTRATIVE LAW, §51.93 (2001).

Turning to the case under review herein, Petitioner alleges that the ALJ erred by failing to approve, in part, an attorney's fee that had been stipulated between Petitioner and Petitioner's counsel. Petitioner and her counsel submitted a fee stipulation wherein Petitioner agreed to pay $2,338.93 in attorney's fees and $19.15 in costs, after she received $11,694.95, along with continuing temporary total disability benefits. Petitioner argues that the ALJ erred by approving of fee in the amount of $1, 352.50 and costs in the amount of $19.15, when the amount of the requested fee had been agreed to by Petitioner and her counsel.

In reviewing the fee petition request, the ALJ noted that it is generally accepted that it is within the discretion of the trier of fact to determine the reasonableness of the fees assessed against a claimant and correctly cited the D.C. Official Code § 32-1530 and 7 DCMR § 224.2 for determining the reasonableness of an attorneys' fee request. In ruling on the fee request, the ALJ found that the nature and complexity of the matter was not outside the ordinary and reduced the hourly rate requested for services provided by a case manager from $100.00 to $50.00. In addition, the ALJ found that a review of the time spent preparing for and presenting the case appeared to be, in part redundant, and as such, reduced the case manager's time and attorney's time by a few hours. In addition, the ALJ reduced the attorney's time related to instructions to the case manager in half. In the Order, the ALJ detailed the amount of time requested for approval and the reasons that the requested time was reduced.

In her appeal, Petitioner asserts that while the ALJ's reasoning for the denial of a requested attorney's fee may be presumably appropriate when a claimant is seeking to assess a fee against an

employer, it is not appropriate when there is an agreement between a claimant and counsel, as in the instant matter. However, it must be noted that Petitioner cites no legal authority or support for her contention that it was erroneous for the ALJ to reduce the stipulated fee. This Panel must respectfully reject Petitioner's argument on this point, as 7 DCMR § 224.6 states "No contract pertaining to the amount of an awardable attorney fee shall be recognized in reviewing any application for attorney fees under this Act."

As the CRB previously acknowledged in *Palmerton v. Parsons Corporation*, CRB No. 05-016, AHD No. 05-016, OWC No. 586530 (January 5, 2006), "… the standard still utilized by the Court of Appeals of this jurisdiction is one of reasonableness", citing *Hampton Courts Tenants Association v. Dist. of Columbia Rental Housing Commission*, 599 A.2d 1113 (D.C. 1991) (*Hampton Courts*). The Court in *Hampton Courts* noted:

> Because the question of whether attorney hours are unreasonably charged obviously depends on the individual facts of the case, the task of attending to each claimed category of hours is uniquely the agency's and the results of such review singularly with the ken and the discretion of the agency.

599 A.2d at 1117.

Despite the fact that Petitioner and her counsel stipulated to the amount of the fee, this Panel concludes that the ALJ has the discretion and authority to determine the reasonableness of an attorney's fee, in a matter that was litigated before that fact-finder. After reviewing the evidence of record, this Panel must emphasize that the ALJ explained, in great detail, the reasons for reducing the fee requested by Petitioner. As such, considering that the Supreme Court has noted that in determining the reasonableness of legal hours expended, hours that are redundant, excessive or unnecessary should be excluded; this Panel concludes that the ALJ has sufficiently explained why she reduced the attorney and case manager fee hours requested. *See Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct.1933, 76 L.Ed.2d 40 (1983).

In addition, as to the hourly rate charged by the case manager, it should be noted that in the *Policy Directive Clarifying the Award of Attorney Fees in the District of Columbia,* issued by the Director on May 12, 2005, a reasonable paralegal fee is limited to no more than $75.00 per hour. If a paralegal's fee is limited to no more than $75.00, it certainly is within the ALJ's discretion to reduce the case manager's fee to $50.00 per hour. Moreover, the CRB has previously sanctioned a $50.00 hourly rate for case manager's services. *See Palmerton, supra.*

As a result, after reviewing this matter, this Panel cannot find that there was an abuse of discretion by the ALJ in denying the fee requested by Petitioner in this matter and awarding fees in the amount of $1,342.50, plus costs of $19.15, as the ALJ's determination was in accordance with the law and neither arbitrary nor capricious

CONCLUSION

The Order of April 6, 2007 is neither arbitrary nor capricious; and is in accordance with the law.

ORDER

The Order of April 6, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS
Administrative Appeals Judge

July 24, 2007
DATE