

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-010(A)

KENNETH ALLEN,
Claimant,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF FIRE AND EMERGENCY MEDICAL SERVICES,
Employer.

On Consideration of Claimant's Application for
an Assessment of an Award of Attorney's Fees
AHD No. PBL 14-008, DCP No. 0468-WC-99-0500014

(Issued October 13, 2016)

Michael J. McAuliffe for the Claimant
Rahsaan J. Dickerson for the Employer

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

HEATHER C. LESLIE for the Compensation Review Board.

ORDER GRANTING AN ATTORNEY FEE AWARD

Following a formal hearing, an administrative law judge ("ALJ") issued a Compensation Order awarding Claimant temporary total disability benefits as a result of his compensable neck injury. Employer appealed, and the Compensation Review Board ("CRB") affirmed the Compensation Order. *Allen v. D.C. Department of Fire and Emergency Services*, CRB No. 16-010 (June 22, 2016).

On September 19, 2016, counsel for Claimant filed a fee application. Counsel requested the CRB approve a fee in the amount of \$4,560.00 for 15.20 hours of work at a rate of \$300.00 per hour. An Order to Show Cause was issued directing Employer to show cause why an order awarding an attorney's fee in the requested amount should not be approved.

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Employer opposed the fee application. Employer raises no objection to the amount Claimant's counsel alleges was secured as a result of his representation. Instead, Employer contends that 2.8 hours of Claimant's counsel's time is unreasonable because it was expended after counsel filed Claimant's Opposition to the Application for Review:

In this matter, Claimant filed his Opposition to the Application of Review with the CRB on February 22, 2016. According to the bill attached to the Petition at issue, 2.8 of the hours billed in Claimant's itemization is for work performed after Claimant filed his opposition to Employer's AFR, including "[go]o[ing] over CRB decision," Claimant's counsel's telephone conference with Claimant regarding Claimant's new address, various emails and voicemails. Since none of the services performed after the filing of Claimant's opposition to the AFR contributed to successful prosecution of Claimant's claim, the hours listed for those services must be excluded.

Employer's Opposition to Claimant's Fee Petition, p. 3.

Employer also argues counsel's requested hourly rate is in excess of the maximum allowable rate that may be awarded pursuant to the Director's May 12, 2005 Policy Directive Clarifying the Award of Attorney Fees in District of Columbia Workers' Compensation Case.

Regarding Employer's first argument, as we stated in *Berry v. D.C. Department of Public Works*, CRB No. 14-049(A)(2) (March 16, 2015) when addressing virtually the same argument:

After filing the opposition, Mr. Levi conferenced with his client and reviewed the decisions issued in this matter; ethically, an attorney would be remiss if he simply ceased working on a matter because an opposition had been filed. The CRB finds no merit to Employer's argument that Mr. Levi should not be compensated for his time spent after May 6, 2014.

For this reason, Employer's argument is rejected.

As to Employer's second argument, that counsel's request to be awarded an hourly rate of \$300.00 an hour is in excess of what is allowable, we agree. Claimant's counsel's request for an attorney fee is controlled by the Director's May 12, 2005 directive¹ which caps the requested hourly rate at \$240.00 per hour.² We disagree with counsel's characterization of the Directive as merely advisory. Claimant points this panel to no authority supporting such a claim and we can find none.

¹ A new Policy Directive Regarding the Award of Attorney Fees in the District of Columbia Workers' Compensation Case was issued on March 14, 2016. In that directive, attorney fee requests were capped at a maximum rate of \$310.00 per hour for attorneys with 20 or more years' experience. That directive is applicable to new claims filed pertaining to injuries sustained on or after July 1, 2016.

² Employer does not contest this hourly amount in argument.

Claimant's counsel spent 15.20 hours in the successful prosecution of this claim. At a rate of \$240.00 an hour, the total is \$3,648.00, an amount less than 20% of the benefits secured. Thus, it hereby is ordered:

Subject to the condition that the total attorney fee awarded and payable for all work performed before the Office of Hearings and Adjudication's Administrative Hearings Division and the CRB is limited to and does not exceed twenty percent (20%) of the actual benefits secured as a result of counsel's efforts with respect to the issues arising from AHD No. PBL 14-008 and DCP No. 0468-WC-94-0500014, an award of a reasonable attorney's fee in the amount of \$3,648.00 is assessed against Employer and is payable directly to Claimant's counsel, Michael J. McAuliffe.

So ordered.