

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

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

**CRB No. 14-113(A)**

**RAEPHAEL MCARTHUR,  
Claimant,**

**v.**

**DISTRICT OF COLUMBIA DEPARTMENT OF MENTAL HEALTH,  
Self-Insured Employer.**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 OCT 22 AM 11 04

AHD No. PBL 12-035, DCP No. 761012-0001-1999-0008

(Issued October 22, 2015)

Harold L. Levi for Claimant  
Andrea G. Comentale for Employer

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

JEFFREY P. RUSSELL for the Compensation Review Board.

**ORDER GRANTING AN ATTORNEY'S FEE AWARD**

Claimant, represented by Harold Levi, presented a claim at a formal hearing in the Administrative Hearings Division (AHD) of the Department of Employment Services for reinstatement and restoration of temporary total disability benefits and other benefits including provision of medical care that had been terminated by Employer.

The Administrative Law Judge (ALJ) hearing the claim issued a Compensation Order (CO 1) in which the claim for relief was granted. Employer appealed CO 1 to the Compensation Review Board (CRB) which upheld the appeal, and remanded the matter for further consideration.

On remand, the ALJ issued another CO (CO 2), again granting the claim, and Employer again appealed to the CRB. The CRB affirmed CO 2. There has been no appeal of that affirmance to the District of Columbia Court of Appeals.

On September 11, 2015, Mr. Levi filed a fee application for legal services he performed on Claimant's behalf before the CRB seeking assessment of an attorney's fee against Employer. Mr. Levi requested the CRB approve a fee in the amount of \$4,320.00 for 18 hours of work at a rate of \$240.00 per hour.

In the fee application, Mr. Levi averred that, as a result of the successful prosecution of Claimant's claim, Claimant had received back pay from June 1, 2012 in the amount of \$94,904.00, as well as reimbursement for unspecified medical bills and payment of additional unspecified medical bills, as well as reinstatement of medical care in the future as warranted.

In support of the amount of back pay, Mr. Levi attached a document purported to be "the final paystub" received by Claimant, bearing the letterhead of Sedgwick Claims Service, including a gross pay in the amount of \$1,078.46, along with deductions for life insurance and medical insurance policies, and yielding net pay in the amount of \$911.67.

Employer filed "Employer's Opposition to Fee Petition" on September 18, 2015.

In that opposition, Employer raised two objections: first, that Mr. Levi had failed to provide evidence of the amount of benefits secured; and second, that the fee petition should be denied because it included charges for legal services rendered in the first of the two appeals heard by the CRB, in which first appeal CO was vacated and remanded. Citing *Atkins v. District of Columbia Department of Corrections*, CRB No. 14-153(A) (May 22, 2015) (*Atkins*), Employer argued that no award can be made for time spent representing Claimant in the appeal which did not result in the affirmance of the CO 1.

Taking the second argument first, the CRB has reconsidered the rule in *Atkins* in *Gruenwald v. D.C. Housing Authority*, CRB No. 15-128, AHD No. PBL 13-039 (October 1, 2015) (*Gruenwald*). In *Gruenwald*, the CRB adopted the approach and reasoning of the United States Department of Labor's decision in *Clark v. Director, Office of Workers' Compensation Programs*, 9 BLR 1-211 (1986), stating:

We have considered the matter further, and have come to the conclusion that deciding whether there has been a "successful prosecution" must take into account the final outcome of a claim, not the result of litigation at any given stage prior to the final determination.

Were it otherwise, there would be the illogical situation where a claimant's attorney would be denied an attorney's fee when the claim was denied at both AHD and the CRB, but the denial of benefits was ultimately reversed by the District of Columbia Court of Appeals. Similarly, under the prior authority, an attorney would be awarded a fee if a claimant prevails at AHD but the award of benefits is ultimately reversed by the CRB and the reversal is upheld by the Court of Appeals. The decision today avoids these incongruous outcomes.

Accordingly, we reject Employer's second argument.

Regarding the first argument, Mr. Levi filed a “Reply to Employer’s Opposition to Fee Petition” on September 30, 2015. In it, Mr. Levi sets forth in detail the arithmetic computation to be gleaned from multiplying the number of weeks from the restoration/reinstatement of temporary total disability benefits, relying on the submitted disability payment stub from Employer, and asks that we take administrative notice of the accuracy of his arithmetic computations. We are inclined to do so, particularly in light of Mr. Levi’s representation that he requested a payout history upon receipt of Employer’s opposition, but none has been provided, and Employer’s lack of objection or response to Mr. Levi’s computations.

Employer has raised no other objections to the Fee Petition. Specifically, Employer has not questioned either the reasonableness of the time averred to have been spent, the hourly rate of the requested fee award, or raised any other substantive objection to the requested award.

Accordingly, the Fee Petition is granted in the amount of \$4,320.00, subject to the limitation that the total fees to be awarded for representation in this case at all stages of the litigation not exceed 20% of the amount of the benefits secured as a result of Mr. Levi’s representation of Claimant, as specified in D.C. Code § 1-623.27(b)(2).

*So ordered.*