

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

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB No. 06-15

RENARDA HOUSE,

Claimant – Petitioner,

v.

ONE PRICE DEPARTMENT STORE AND LIBERTY MUTUAL FIRE INSURANCE CO.,

Employer/Carrier – Respondent.

Appeal from an Order Awarding Attorney Fees of
Chief Administrative Law Judge Malcolm J.L. Harper
AHD No. 04-258A, OWC No. 590570

Heather Leslie, Esq., for the Petitioner

Thomas E. Dempsey, Esq., for the Respondent

Before E. COOPER BROWN, Chief Administrative Appeals Judge, LINDA F. JORY and SHARMAN J. MONROE, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *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 (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

BACKGROUND

This appeal follows the issuance of an Order Awarding Attorney Fees 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 November 1, 2005, the Administrative Law Judge (ALJ) reduced, pursuant to D.C. Official Code § 32-1530, the Claimant-Petitioner (Petitioner) attorney fee request from \$6,662.50 for 42.85 hours of work with costs in the amount of \$745.50 to \$1,540.00 for 12.6 hours of work with costs in the amount of \$745.50.²

The Petitioner asserts that the Order awarding an attorney's fee in this matter is arbitrary, capricious, unsupported by substantial evidence in the record and not in accordance with the law and should therefore be reversed.

ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. D.C. Official Code § 32-1521.01 (d)(2)(A). "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review herein, the Petitioner alleges that the ALJ erred in not analyzing or applying 7 DCMR § 224(A) or 7 DCMR § 224(C)³ to the lodestar to determine whether or not the attorney's fee should be enhanced to an amount up to equal to 20% of the benefits secured through effort of counsel. More specifically, the Petitioner argues neither the regulations nor the Act indicate that a fee for an attorney representing a claimant is to be limited to the "lodestar" which is a simple mathematical calculation in which the number of hours expended are multiplied by the reasonable hourly rate set by the Director. The Petitioner asserts

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.

² In the petition, counsel for the Petitioner requested fees for 15.85 hours of work at the hourly rate of \$250.00 spent on the development and presentation of the claim (legal services), and for 27.00 hours of work at the hourly rate of \$100.00 spent by a case manager in the preparation of the claim. In the Order, the ALJ reduced the requested fees to 9.10 hours at the rate of \$150.00 for legal services and to 3.5 hours at the rate of \$50.00 for case manager services.

³ A review of the Petitioner's appeal *in toto* and of the regulations attendant to the Act indicates that the correct citations are to 7 DCMR § 224.2 and 7 DCMR § 224.3.

there is no language in the Act or implementing regulations to support the ALJ's conclusion that administrative work is not a compensable legal service within the meaning of the Act. Petitioner asserts, to the contrary, that 7 DCMR § 224.3 provides that work for which a fee can be charged includes all work performed by an attorney, paralegal, law clerk or other person assisting an attorney.

In the Order, the ALJ indicated that in this jurisdiction, the factors set forth at 7 DCMR § 224.2 are utilized to enhance or reduce an attorney fee. Based upon these factors, the ALJ determined that, in light of the Petitioner's counsel's professed experience and expertise in workers' compensation law, attorney time was compensable at the rate of \$200.00 per hour and case manager time was compensable at a rate of \$50.00 per hour. An ALJ's determination of an hourly rate is solely within the discretion of the ALJ. *See Palmerton v. Parsons Corporation*, CRB No. 05-016, AHD No. 05-016, OWC No. 586530 (January 5, 2006). Neither party presented any evidence or persuasive reason showing that the ALJ abused his discretion in reducing the hourly rates. Nor does the Panel discern any evidence or reason. Therefore, the Panel will not overturn the reduction in hourly rates.

The Panel agrees with the Petitioner that neither the regulations nor the Act indicate that a fee for an attorney representing a claimant is to be limited to the "lodestar" amount. 7 DCMR § 224.2 lists the factors that must be considered in awarding an attorney's fee. Although the ALJ cited the regulation as the rationale for reducing the hourly rate sought, there is no indication that the ALJ also considered the factors in analyzing the hours expended in this case.

The ALJ disallowed 30.25 hours of time, thereby issuing an award calculated on 9.10 hours of attorney time and 3.50 hours of case manager time, on the basis that the disallowed time was "either excessive, unnecessary, redundant, or of an administrative nature." The Board has determined that administrative tasks may be necessary as part of the development and presentation of a case and that they, therefore, may be compensable legal services within the meaning of the Act. *See Steadman v. United Parcel Service*, CRB No. 05-262, AHD No. 00-384A, OWC No. 5389191, (December 14, 2005). In *Palmerton, supra*, the Board, citing *Hampton Courts Tenants Association v. D.C. Rental Housing Commission*, 590 A.2d 1113 (D.C. 1991), indicated that reasonableness remains the standard to be used when reviewing an attorney fee request and that that standard is driven by the individual facts of the case. *Palmerton* at p. 4. The Panel notes that the ALJ disallowed 2.25 hours of work attributable to notifying the claimant about the Compensation Order since AHD routinely sends a certified copy of the Compensation Order to the claimant. However, counsel has an ethical duty to contact a claimant about a decision in a case in which counsel is the claimant's legal representative and to discuss that decision with the claimant, a duty that cannot be discharged by a third party. Accordingly, the Panel finds the ALJ's exclusion of 30.25 hours on the aforesaid bases, *i.e.* excessive, unnecessary, redundant, or of an administrative nature, without more explanation, is unreviewable and thereby an abuse of discretion.⁴ *See Palmerton, supra*.

⁴ The disallowance of 4.10 hours of work performed on July 12, 2004 because the matter was not properly before AHD is reasonable and in accordance with the law.

The Panel accordingly remands the Order Awarding Attorney Fee in its entirety with instructions to consider the factors set forth in 7 DCMR § 224.2 and to provide a detailed explanation for disallowing any hours requested by the Petitioner in her fee petition.

CONCLUSION

The Order Awarding an Attorney's Fee of November 1, 2005 is arbitrary, an abuse of discretion and not in accordance with the law.

ORDER

The Order Awarding an Attorney's Fee of November 1, 2005 is hereby REVERSED AND REMANDED for review of the hours claimed, to include further evidentiary proceedings, if necessary, a detailed explanation for any hours disallowed and an appropriate award assessed against the Respondent consistent with the forgoing discussion.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

March 14, 2006
DATE