

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. 07-84

RENARDA HOUSE,

Claimant - Petitioner

v.

ONE PRICE DEPT. STORE AND LIBERTY MUTUAL INSURANCE GROUP,

Employer/Carrier - Respondent

Appeal from an Attorney's Fee Order of
Administrative Law Judge Nata K. Brown
AHD No. 04—258A, OWC No. 590570

Matthew Pepper, Esquire for the Petitioner

Christopher R. Costabile, Esquire for the Respondent

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

LINDA F. JORY, *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.

¹Pursuant 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 20024, Title J, the 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. Official Code §§ 1-623.1 to 1.643.7(2005),

BACKGROUND

This appeal follows the issuance of an Order Awarding Attorney Fees on Remand 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), reiterated the Order by AHD on November 1, 2005 which was remanded by the CRB on March 14, 2006 as the Panel therein determined the 2005 Order was arbitrary and an abuse of discretion. The CRB remanded the matter to AHD to consider the factors set forth in 7 DCMR §224.2 and to provide a detailed explanation for disallowing any hours requested by Petitioner in her fee petition.

Claimant-Petitioner's (Petitioner) Petition for Review alleges as grounds for its appeal that the Order on Remand is not in accordance with the instructions set forth by the Board's Decision and Order. Respondent has filed a response to Petitioner's Application for Review asserting the Order on Remand should be affirmed as it is supported by substantial evidence.

ANALYSIS

As an initial matter, the Compensation Review Board (CRB) and this Review Panel (hereafter, the Panel) 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). For reasons set forth below, the Panel finds the Attorney Fee Order is in accordance with the law and neither arbitrary nor capricious and therefore must be affirmed.

In support of Petitioner's primary argument that the Order on Remand is not in accordance with the instructions set forth by the Board, Petitioner asserts that "Rather than following the Board's instructions, the ALJ insisted that [she] 'has the discretion to determine which of counsel's submissions can be considered compensable legal work essential to the successful prosecution of the case'". The Panel must reject Petitioner's argument that the order must be reversed as the Panel does not conclude that the Order is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

As the CRB so 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. District of Columbia Rental Housing Commission*, 599 A.2d 1113 (D.C. June 11, 1991) (*Hampton Courts*). Specifically, the court in *Hampton Courts* stated:

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.

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.

On remand, the ALJ further clarified that the disallowed hours were found to be related to the following:

- Attorney instructions to the case manager – excessive and administrative in nature
- Preparation and signing of form letters – excessive and administrative in nature
- Duplicate requests for form letters – redundant and administrative in nature
- Receipt of correspondence from various parties – excessive and unnecessary
- Telephone calls – excessive and administrative in nature

Given that the Supreme Court has stated that in determining the reasonableness of the legal hours expended, hours that are excessive, redundant or otherwise unnecessary are to be excluded; the Panel must conclude that the ALJ has sufficiently explained why she reduced the attorney fee hours requested to the same amount previously excluded by AHD. *See Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct.1933, 76 L.Ed.2d 40 (1983).

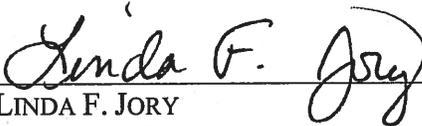
CONCLUSION

The Order Awarding Attorney's Fee on Remand from the Administrative Hearings Division is neither arbitrary nor capricious; and is in accordance with the law.

ORDER

The April 6, 2007 Order Awarding Attorney's Fee on Remand is hereby **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:



LINDA F. JORY
Administrative Appeals Judge

May 31, 2007

Date