

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

CRB No. 10-167(A)(1)

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

FELIX ROMERO,

Claimant,

v.

ROMERO CONSTRUCTION, INC. AND COMMERCE & INDUSTRY,

Employer and Carrier.

Manuel Rivera, Esquire for the Claimant
Thomas G. Hagerty, Esquire for the Employer

Before: HEATHER C. LESLIE, MELISSA LIN JONES, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*,

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

ORDER DENYING RECONSIDERATION

On March 21, 2013, Claimant's attorney filed an application for an attorney's fee, requesting the Compensation Review Board (CRB) assess against the employer and insurer an attorney's fee totaling six thousand seventy seven dollars and fifty cents (\$6,077.50) for 24.31 hours of work, billed at \$250.00 per hour that was asserted to have been performed by Claimant's counsel in this appeal before the Compensation Review Board.

An Order to Show Cause was issued on March 26, 2013 ordering the employer and insurer Romero Construction, Inc. and Commerce and Industry show cause why an attorney's fee in the total sum of six thousand seventy seven dollars and fifty cents (\$6,077.50) for work performed before the Compensation Review Board by Claimant's counsel should not be approved, awarded and assessed as requested by the fee application. The Employer was ordered to respond on or before April 5, 2013.

On April 5, 2013, the Employer filed an Objection to the Application for an Attorney Fee Assessment. The Employer argues in essence that counsel overstated the amount secured by his representation, that counsel failed to comply with 7 DCMR §§ 224, and that counsel overstated the amount of time expended in front of the CRB.

After considering the parties arguments and the procedural history, the CRB denied the request for attorney's fee on the basis that the Claimant's attorney failed to satisfy, §§ 32-1530 of the Act. Attorney fees [Formerly § 36-330], which states,

(a) If the employer or carrier declines to pay any compensation on or before the 30th day after receiving written notice from the Mayor that a claim for compensation has been filed, on the grounds that there is no liability for compensation within the provisions of this chapter, and the person seeking benefits thereafter utilizes the services of an attorney-at-law in the **successful prosecution** of his claim, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee against the employer or carrier in an amount approved by the Mayor, or court, as the case may be, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum after the compensation order becomes final. (Emphasis added.)

In the request for reconsideration, Counsel argues,

The attorney for claimant was successful in securing Worker's Compensation benefits owed to the claimant by the employer/insurance through a hearing before OHA, an appeal process **defended** before the CRB and the D.C. Court of Appeals. The award of Worker's Compensation benefits by OHA were not disturbed because of the efforts of the claimant's attorney in protecting the claimant's rights by **defending** the ALJ CO on appeal. (Emphasis added.)

Claimant's argument at 2.

As Claimant's counsel points out, the successful prosecution of the case occurred in front of the Office of Hearings and Adjudications, at which a request for an attorney's fee may be made. Claimant's counsel *defended* the CO in front of the CRB. Stated another way, it was the Employer that was successful in the prosecution of the appeal before the CRB, not the Claimant.

Counsel's request for reconsideration of the denial of the request for an attorney fee assessment is **DENIED**.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE,
Administrative Appeals Judge

May 15, 2013

DATE