

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-124 (A)

RONALD WARD,
Claimant,

v.

DISTRICT OF COLUMBIA HOUSING AUTHORITY
Employer.

On Consideration of Claimant's Fee Application
AHD No. PBL 12-055, DCP No. 3011026526

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 NOV 7 PM 1 44

(Issued November 7, 2016)

Harold L. Levi for the Claimant
Andrea G. Comentale and Frank McDougald for the Employer

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

LINDA F. JORY for the Compensation Review Board.

ORDER DENYING ATTORNEY'S FEE

Following a Formal Hearing, an administrative law judge ("ALJ") issued a Compensation Order denying Claimant disability benefits and payment of medical expenses. *Ward v. District of Columbia Housing Authority*, AHD No. PBL 12-055A, DCP No. 3011026526 (July 23, 2015). Claimant appealed and the Compensation Review Board ("CRB") reversed and remanded the Compensation Order. *Ward v. District of Columbia Housing Authority* *Ware v. District of Columbia Department of Corrections*, CRB No. 15-124, (December 30, 2015).

A Compensation Order on Remand ("COR") issued by the Administrative Hearings Division ("AHD") on September 16, 2016 which granted Claimant's claim for relief and restored Claimant's Temporary Partial Disability benefits from February 17, 2014 to the present and continuing. Claimant however returned to work in May 2015.

On October 11, 2016, Claimant's attorney filed a Fee Petition, requesting the CRB assess an attorney's fee against Employer in the amount of \$5,880 (five thousand eight hundred eighty dollars) for 24.50 hours of work, billed at \$240.00 per hour that was asserted to have been performed by Claimant's counsel in this appeal before the CRB. The Fee Petition asserted that as a result of the successful prosecution of this matter, Claimant was entitled to 32-biweekly payments of \$1,392.00.

An Order to Show Cause issued on October 12, 2016 which ordered Employer to show cause by Monday, October 24, 2016 why an order awarding an attorney's fee of \$5,880.00 should not be approved and assessed as requested.

On October 31, 2016, Employer filed Employer's Motion to File Opposition to Fee Petition Time Having Expired with Employer's Opposition to Fee Petition attached as Attachment A. Employer explained that it realized on October 31, 2016 that its response had not been filed. As this Panel finds Employer has not provided an adequate explanation reason for not following the CRB's Order to Show Cause deadline, Employer's Attachment A shall not be considered.

7 DCMR § 224.2 provides:

In determining whether to award attorney fees and the amount, if any, to be awarded, the following factors shall be considered:

- (a) The nature and complexity of the claim including the adversarial nature, if any, of the proceeding;
- (b) The actual time spent on development and presentation of the case;
- (c) The dollar amount of benefits obtained and the dollar amount of potential future benefits resulting from the efforts of an attorney;
- (d) The reasonable and customary local charge for similar services;
- and
- (e) The professional qualifications of the representative and the quality of representation afforded to employee.

The CRB has held Claimant's attorneys are required to submit a detailed time itemization as well as explanation of why an attorney fee should be assessed against an employer for work performed in front of the CRB. Claimant's attorneys are also required to submit proof of the benefits secured. *Jones v. University of the District of Columbia*, CRB No. 09-065 (September 9, 2009).

Claimant provided:

He is thereby entitled to 32 bi-weekly payments of \$1,392 (attachment) and while Counsel expended in excess of 56 hours in the hearing matter and 24 hours in the appellate matter, he is entitled to total fees of \$8,914.17 based on the successful benefits received by Claimant.

Attached to the Fee Petition are four Earnings Statements with Claimant's name as the payee. Two of these statements indicate DC Housing Authority as the "payor" and two statements do not indicate who has issued the statements however all four statements show social security, federal income tax and Maryland state income tax deductions, thus the four statements appear to be payroll checks and not wage loss benefits paid by employer pursuant to AHD's COR.

Because of this, we find Counsel has not met its burden of submitting proof of the benefits secured as a result of his efforts, therefore the fee petition is dismissed. Should he wish to pursue this matter, Claimant's counsel can resubmit a fee application within 30 days from the date of this Order that identifies the amount of fee requested for work performed before the CRB, and the basis for the award including a time itemization and proof of benefits secured.

Claimant's counsel's petition is DENIED WITHOUT PREJUDICE. Counsel has 30 calendar days from the date of this order to re-file his fee petition with proof of the actual benefit secured as a result of his representation and successful prosecution, and a time itemization outlining hours spent on the appeal that gives rise to the fee request.

So ordered.