

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-076 (A)**

**RONALD MAHONEY,  
Claimant,**

**v.**

**DISTRICT OF COLUMBIA DEPARTMENT PUBLIC SCHOOLS,  
Employer.**

In Re An November 16, 2015 Application for Attorney's Fees  
AHD No. PBL 14-004, DCP No. 76000500012005-008

(Decided December 18, 2015)

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 DEC 18 AM 9 09

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

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

HEATHER C. LESLIE for the Compensation Review Board.

**ORDER AWARDING AN ATTORNEY'S FEE**

On November 16, 2015, Claimant's counsel, Harold L. Levi, filed a fee application requesting the Compensation Review Board (CRB) assess against Employer an attorney's fee in the amount of \$12,780.00 for 53.25 hours, billed at \$240.00 per hour, asserted to have been performed by Claimant's counsel in this appeal before the CRB.

On November 17, 2015, the CRB issued an "Order to Show Cause Re: November 19, 2015 Fee Application", in which Employer was directed to show cause why an Order for fees of \$12,780.00, should not be approved, awarded and assessed as requested by Claimant's counsel, said response to be filed on or before Tuesday, December 1, 2015.

On December 1, 2015, Employer filed "Employer's Response to Order to Show Cause and Opposition to Fee Petition", in which Employer argues a fee award should be not be entered in the amount requested because (1) the actual benefit secured is \$434.66 less than what Claimant claims; (2) the amount sought to be awarded exceeds 20% of the benefits secured, because the

combined amount sought in the CRB fee application and a fee application filed with the Administrative Hearings Division (AHD) in connection with this same claim is \$28,507.50, while the actual benefits secured are \$84,259.53, making the request for fees equal to 34% of the actual benefits secured; and (3) Claimant's billing statement does not support the requested fees, pointing to entries it deems excessive and entries that were also included in the fee application filed with AHD and thus are duplicative and ought not be awarded by the CRB.

On December 11, 2015, Claimant's counsel filed "Claimant's Reply to Employer's Opposition to Fee Petition", where counsel concedes Employer is correct that the benefit secured is \$434.66 less but that the amount of benefits has increased since Claimant's filing so any error is inconsequential. Claimant's counsel also argues that pursuant to *Martin v. D.C. Department of Corrections*, CRB No. 08-212, AHD No. PBL 08-004 (April 14, 2009)(*Martin*), "it is clear that the CRB and OHA have the authority to award legal fees based on wage loss and medical benefits that have actually been secured for a claimant as well as for wage loss benefits payable prospectively." Claimant's counsel's argument at 5.

Counsel argued further that the time entries which Employer asserts are duplicative are clearly entries for work performed before the CRB, are not excessive or redundant, and therefore should be approved. Counsel does not contest Employer's assertion that the same time entries were included in the AHD fee application.

Regarding Employer's first argument, while counsel does concede that the amount of benefits secured as of the date of the fee petition was in error by \$434.66, we agree with counsel that that this error is inconsequential as since the fee petition was filed, Claimant has continued to receive wage loss benefits in excess of \$434.66.

Employer next argues that Claimant's counsel's request exceeds 20% of the benefits secured. We agree with counsel, however, that *Martin* states an award of an attorney's fee in excess of 20% of benefits accrued as of the date of the fee petition is not proscribed where benefits are ongoing, and the fee award is paid over time as additional benefits are paid to a claimant, up until the entire approved fee is paid, not to exceed 20% of the total benefits secured through counsel's efforts. This has been the enunciated law for more than six years. Employer does not mention *Martin* in its opposition, nor does Employer provide any basis for a departure from this long established rule. We reject Employer's argument.

Regarding the argument that some of Claimant's counsel's entries are duplicative in that they have also been submitted in the fee petition pending before AHD, Employer does not contest the entries representing work on November 12, 2014, May 27 2014, and October 1, 2015 are billing entries for work performed before the CRB. Regarding the May 27, 2014 entry, while Employer believes an hour for a review of the Compensation Order on Remand is excessive in light of the earlier review of the same order that took place on April 25, 2014, the issues in the above case were complex, involving questions of law and fact. Employer's subjective belief that the amount of time to review the order is excessive is rejected. Thus, the above entries are properly awardable in connection with this fee application. If the entries are indeed identical and duplicative of entries included in the AHD fee application, the proper place to oppose an award based upon them is in connection with the AHD fee application.

Employer's counsel refers to *Workcuff v. D.C. Housing authority v. District of Columbia Housing Authority* CRB No. 15-054, AHD No. PBL 12-022A, DCP No. 761001000200200006 (September 24, 2015) for the proposition that the entries for October 8, 2014 and December 30, 2014 were not for work performed before the judge and thus not allowable. We agree with employer that the December 30, 2014 entry reflecting .25 in a conference with the Claimant is not allowed as the case was remanded to AHD and any work claimed cannot be said to have taken place in front of the CRB. Thus, .25 hours of work claimed is disallowed.

We also agree that the April 20, 2015 time entry is not allowed. This 1.00 entry represents a review of the Compensation Order on Remand. This cannot be said to be work performed before the CRB as no appeal was filed at that time.

We do not agree that the 1.5 hours on October 8, 2014 is not allowable as it represents work not done before the CRB. We decline to read *Workcuff* as restrictively as Employer urges, arguing that only work done before the CRB, such as briefs, is allowable. While the case was pending before the CRB, Employer and Claimant's counsels are still ethically tasked with informing their clients of the status of the case. While not directly related to any briefs or filings with the CRB, meetings with clients, correspondence with clients, attorney's, medical practitioners, insurance representatives and the like is part of the litigation process. Such entries before the CRB are recoverable.

Finally, we address Employers subjective complaint that the 34 hours put forth by Claimant for the research and preparation of the application for review of the Compensation Order on Remand is excessive. While the facts and evidence remained the same, the complexity of the law and the newly enunciated burden shifting scheme in the *en banc* review support Claimant's assertion. *Mahoney v. D.C. Public Schools*, AHD No. PBL 14-004, ORM/PSWCP No. 76000500012005-008, (November 12, 2014).

Accordingly, the fee application is GRANTED, and a fee in the total amount of \$12,480.00 is assessed against Employer for work performed before the CRB, subject to the proviso that the total fee for which Employer is liable for all services rendered before AHD and CRB shall not exceed the 20% limitation set forth in D.C. Code § 1-623.24 (b)(2).

*So ordered.*