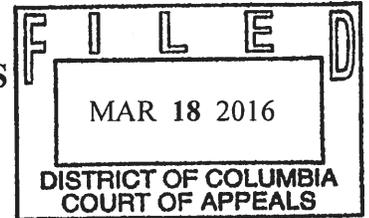


DISTRICT OF COLUMBIA COURT OF APPEALS

No. 14-AA-1103



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, PETITIONER,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

RONALD KOHNHORST, CLAIMANT/INTERVENOR.

Petition for Review of Decision and Order
of the District of Columbia Department of Employment Services
Compensation Review Board
(CRB-63-14)

(Submitted September 30, 2015

Decided March 18, 2016)

Before BLACKBURNE-RIGSBY and MCLEESE, *Associate Judges*, and
FARRELL, *Senior Judge*.

ORDER

Claimant/intervenor received a schedule award of worker's compensation based on a 37% permanent partial disability. That award is not challenged before this court. Instead, the Washington Metropolitan Area Transit Authority (WMATA) contests the award of attorney's fees in the amount of \$16,100 to claimant's counsel by the Administrative Law Judge (ALJ). The Compensation Review Board (the Board) upheld the award.

The court has concluded that a remand to the Board is necessary for it to require further consideration or explanation of the award by the ALJ. Specifically, the award was made after the claimant and his attorney, Rebekah A. Miller, submitted successive applications for payment of attorney's fees that contained, as between them, a sizable inconsistency in the number of hours counsel stated she had worked on the case. The first application stated that Ms. Miller had

represented the claimant from approximately September 21, 2012, through January 13, 2014 (the date of the application), for a total of 50.25 hours.¹ WMATA objected to the fee request by stating that the fees should be limited to the 40.75 hours of service that Ms. Miller, by her own accounting, had performed between September 7, 2012, when WMATA filed its application for a formal hearing, and January 2, 2013, when the evidentiary hearing was held. The claimant and Ms. Miller then filed an amended application for attorney's fees, in which Ms. Miller claimed to have worked a total of 80.5 hours on the case from September 24, 2012, through January 22, 2013.

The ALJ's Order Granting Attorney Fees mentioned both Ms. Miller's original statement of having "worked 50.25 hours" on the case and her amended "submi[ssion of] documents indicating that she worked on this case [for] 80.5 hours," but the Order contained no discussion of this inconsistency. The ALJ ordered WMATA to pay Ms. Miller's requested fees based on the 80.5 hours documented for the litigation period, noting that this was "less than the 20% limit the relevant statute places on such fees." WMATA appealed this ruling to the Board. Unlike the ALJ, the Board took note of Ms. Miller's "multiple filings reflecting different time itemizations," a difference that "could be a reason to deny or reduce an award." The Board affirmed the award nonetheless, stating only that "the ALJ was not persuaded," by which the Board evidently meant that the ALJ was not convinced that the differing accounts of Ms. Miller's hours, for roughly the same period of work, impeached or cast doubt on the accuracy of her ultimate claim of 80.5 hours of work.

The problem this conclusion presents for the court is that it leaves us to conjecture why the ALJ was not "persuaded" that the markedly differing statements of hours raised no question regarding the 80.5 hour figure.² Indeed,

¹ Ms. Miller also sought attorney's fees for work done by her predecessor counsel, Mark L. Schaffer, but later acknowledged that fees could not be awarded for his services, which predated the litigation before the ALJ. *See* 7 DCMR § 224.8 (2010).

² In stating this, the court expresses no view on WMATA's position that the inconsistency was even greater, amounting to an effective doubling of hours worked (from 40.75 to 80.5) rather than an increase from 50.25 to 80.5 as Ms. Miller represented.

from the ALJ's Order it is not apparent that the ALJ even thought it necessary to come to grips with the difference in hours claimed. In this court, counsel for the agency in effect argues that the ALJ was free to ignore the discrepancy — that is, she “was not required to address the alleged inconsistencies” (Br. for the District of Columbia Department of Employment Services at 9) — because Ms. Miller had withdrawn or “rescinded” her original fee application. But we are not satisfied, any more than the Board was, that the ALJ could treat the inconsistencies as if they did not exist. The multiple filings, in the Board's view, provided “a reason” why the ALJ might have reduced or denied an award, even though the ALJ was not “persuaded” to do so.

Recently this court re-emphasized the principle that “the agency's judgment ‘must be set forth with such clarity as to be understandable,’ otherwise the reviewing court cannot exercise its duty to review.” *Bowles v. District of Columbia Dep't of Emp't Servs.*, 121 A.3d 1264, 1268 (D.C. 2015) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)). The complete silence in the ALJ's Order as to why she credited counsel's later statement of hours despite the different number claimed earlier leaves the court — and, in our view, left the Board — with no basis except surmise on which to exercise its duty of review.

We do not question Ms. Miller's sincerity in tendering the successively different accounts of her hours worked on the case; there may be a wholly adequate explanation for them. Also, there is no question that Ms. Miller's documentation submitted to support the 80.5 hour figure was meticulous and could have been found by the ALJ to be deserving of considerable weight. But, in our judgment, the inconsistencies that the Board itself recognized had potential bearing on counsel's entitlement to an award, or an award in the amount requested, must be addressed by the ALJ before either review tribunal can be fairly satisfied that the fee award was a proper exercise of the ALJ's discretion.³

Reversed and remanded.

³ We find no merit in WMATA's other objections to the award of fees. We are confident that WMATA will have full opportunity to respond to any supplemental submission Ms. Miller makes concerning the fee award.

ENTERED BY DIRECTION OF THE COURT:

A handwritten signature in cursive script that reads "Julio A. Castillo". The signature is written in black ink and is positioned above the printed name.

JULIO A. CASTILLO
Clerk of the Court