

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-102 (A)

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

**FALAH AL-ROBAIE,
Claimant–Respondent,**

v.

**FT. MYER CONSTRUCTION CORP. AND LIBERTY MUTUAL INSURANCE CO.,
Employer/Carrier - Petitioner**

Eric M. May, Esquire, for the Claimant/Respondent
Gerard J. Emig, Esquire, for the Employer-Carrier/Petitioner

Before: HENRY W. MCCOY, MELISSA LIN JONES, AND JEFFERY P. RUSSELL, *Administrative Appeals Judges*.

HENRY W. MCCOY, for the Compensation Review Board.
MELISSA LIN JONES, dissenting in part.

ORDER APPROVING AN AWARD OF AN ATTORNEY'S FEE

On July 22, 2013, Claimant's attorney filed an application for an attorney's fee requesting the Compensation Review Board (CRB) assess against the Claimant an attorney's fee, ostensibly pursuant to D.C. Code § 32-1530(c). Counsel proffers that he represented Claimant in his claim for permanent partial disability which resulted in Claimant receiving an award of \$58,155.84 based on a 53% disability to his left leg.

The request for services performed on Claimant's behalf before the CRB is for a fee in the amount of \$6,800.00 for 29.1 hours of service at \$240.00 per hour.¹ Appended to counsel's fee request is a "Consent to Attorney's Fee" attestation signed by Claimant acknowledging the total disability award he received and agreeing to pay the requested attorney's fee from those proceeds.

¹ Counsel is separately pursuing an attorney's fee award in the amount of \$4,830.00 for 21.4 hours at \$240.00 per hour for services performed on Claimant's behalf at the Hearings and Adjudication level.

With regard to our colleague writing separately, the majority takes the position that Claimant engaged counsel to pursue a claim for a schedule award for each lower extremity and the effort expended is not severable as to each leg. Counsel's efforts were successful in that an award was granted, albeit only for the left leg. The statute speaks in terms of a "successful prosecution" by utilizing the services of an attorney to obtain an award after an employer has declined to pay any compensation. As we do not read the statute to require that the attorney obtain the entire claim for relief, Claimant's counsel is entitled to the fee requested based on the award granted and the 20% limitation in the statute.

AWARD

Upon careful review of Claimant's counsel's fee application, Claimant's consent to pay the requested fee from the proceeds of his permanent partial disability award and in consideration of D.C. Official Code § 32-1530 *et seq.*, 7 DCMR §§ 224 and 269 and the May 12, 2005 *Department of Employment Services Policy Directive Clarifying the Award of Attorney Fees in Workers' Compensation Cases*, it is hereby **ORDERED**:

Subject to the condition that the total attorney fees awarded and payable for all work performed before the Department of Employment Services' Office of Workers' Compensation, Hearings and Adjudication section, and the Compensation Review Board, is limited to and does not exceed twenty percent (20%) of the actual benefits secured through the efforts of claimant's counsel with respect to the issues arising from OWC No. 642015, AHD No. 09-383B, and CRB No. 12-102, as provided by D.C. Code § 32-1530(f) and 7 DCMR § 224, Claimant's counsel's request for an attorney's fee in the amount of six thousand eight hundred dollars (\$6,800.00) for services performed on Claimant's behalf before the CRB is approved, assessed against and payable by the Claimant, Falah A. Robaie, directly to counsel, Eric M. May, Esq.

FOR THE COMPENSATION REVIEW BOARD:

HENRY W. MCCOY
Administrative Appeals Judge

September 24, 2013
DATE

MELISSA LIN JONES, dissenting:

This matter has been on appeal to the Compensation Review Board (CRB) twice.

In a Compensation Order dated October 5, 2009, an administrative law judge (ALJ) ruled Mr. Falah Al-Robaie was not entitled to permanent partial disability benefits for bilateral leg injuries because he had not reached maximum medical improvement.² Mr. Al-Robaie appealed to the CRB, and on June 6, 2012, the Compensation Order was vacated; the case was remanded for further proceedings consistent with the Decision and Remand Order because the ALJ had substituted a legal judgment on the medical issue of maximum medical improvement.³ At this point, Mr. Al-Robaie's attorney had successfully prosecuted an appeal before the CRB.

In a Compensation Order on Remand dated June 21, 2012, Mr. Al-Robaie was awarded permanent partial disability of 53% to the right leg and 28% to the left leg.⁴ This time, Fort Myer Construction Company (Fort Myer) appealed to the CRB; Fort Myer only contested the award to Mr. Al-Robaie's left leg. Fort Myer took the position that the Compensation Order on Remand was internally inconsistent and that the award of permanent partial disability to Mr. Al-Robaie's left leg was contrary to law because there was no medical impairment to Mr. Al-Robaie's left leg. The CRB agreed with Fort Myer:

The award in the Compensation Order on Remand of June 21, 2012 that Claimant is entitled to a 53% permanent partial disability to the right lower extremity is supported by substantial evidence and is in accordance with the law and is AFFIRMED. The concomitant award of 28% to the left lower extremity is not supported by substantial evidence and is not in accordance with the law and is VACATED and REMANDED for further proceedings consistent with this Decision and Remand Order.^[5]

Mr. Al-Robaie's attorney did not successfully prosecute this appeal before the CRB.⁶

In order to be entitled to an attorney's fee, an attorney must achieve "successful prosecution" before the tribunal approving the fee:

² *Al-Robaie v. Fort Myer Construction Corp.*, AHD No. 09-383, OWC No. 642015 (October 5, 2009).

³ *Al-Robaie v. Fort Myer Construction Corp.*, CRB No. 10-014, AHD No. 09-383, OWC No. 642015 (June 6, 2012).

⁴ *Al-Robaie v. Fort Myer Construction Corp.*, AHD No. 09-383, OWC No. 642015 (June 21, 2012).

⁵ *Al-Robaie v. Fort Myer Construction Corp.*, CRB No. 12-102, AHD No. 09-383, OWC No. 642015 (May 20, 2013).

⁶ In a Compensation Order on Remand dated May 30, 2013, Mr. Robaie only was awarded permanent partial disability benefits for his right leg injury. *Al-Robaie v. Fort Myer Construction Corp.*, AHD No. 09-383, OWC No. 642015 (May 30, 2013).

(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.^[7]

Thus, based upon the chronology of this matter, I agree that Mr. Al-Robaie's attorney is entitled to a maximum of 20% of the permanent partial disability benefits awarded for Mr. Al-Robaie's right leg injury based on the first, successful appeal; however, when calculating the amount of the entitlement, only time spent up to the issuance of the CRB's June 6, 2012 Decision and Remand Order qualifies to reach the 20% cap. Any time spent after that date is not the result of a successful prosecution.

MELISSA LIN JONES

Administrative Appeals Judge

⁷ Section 32-1530 of the District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545.