

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

CRB No. 12-151(A)

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

TAURUS ALEXANDER,
Claimant–Respondent,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Self-Insured Employer -Petitioner

Rebekah A. Miller, Esquire, for the Claimant
Mark H. Dho, Esquire, for the Self-Insured Employer

Before: HEATHER C. LESLIE, JEFFREY RUSSELL, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*,

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

ORDER DENYING ATTORNEY'S FEE

On July 2, 2013, Claimant's attorney filed an application for an attorney's fee, requesting the Compensation Review Board (CRB) award a fee totaling five thousand dollars (\$5,000.00) for 15 hours of work, billed at \$200.00 per hour that was asserted to have been performed by Claimant's counsel in this appeal before the Compensation Review Board.

A review of the evidentiary file reveals on January 19, 2012, after a formal hearing, a Compensation Order (CO) was issued where it was determined that as a result of the October 30, 2010 work injury, the Claimant continued to experience disabling neck pain that rendered him incapable of performing his pre-injury duties as a bus driver.¹ The CO further determined that as the Employer had not provided evidence of suitable alternative employment, the Claimant established by a preponderance of the evidence his entitlement to the requested ongoing wage loss benefits. The Employer timely appealed to the CRB.

In a Decision and Remand Order (DRO), the CRB found the ALJ's findings were not supported by substantial evidence in the record.² Specifically, the CRB found,

¹ *Alexander v. WMATA*, AHD No. 11-252, OWC No. 675308 (January 19, 2012).

² *Alexander v. WMATA*, CRB No. 12-022, AHD No. 11-252 (August 8, 2012)

- After noting Dr. Selya's diagnosis of a disc herniation, the ALJ did "not explain how Dr. Selya's interpretation of the MRI results, which appears to be inherently flawed, is more persuasive than Employer's IME physicians' interpretations diagnosing cervical strain/sprain superimposed on preexisting degenerative disc disease; especially where all of the IME physicians appear to be equally credentialed."
- The ALJ's assessment that the Employer's IME physicians did not take into account the Claimant suffered no cervical spine symptoms until after the work accident to be flawed.
- The ALJ's reliance on Dr. Selya's opinion that the Claimant suffered from sequelae from the injury is not supported by the substantial evidence in the record as it is not in line with the lack of abnormal test results.
- The ALJ, upon remand, should identify what evidence in the record allows for a reasonable inference that Claimant has proven an ongoing disability and explain how that inference rationally flows from that evidence.

A COR was issued on August 31, 2012 which again granted the Claimant's claim for relief.³ The Employer timely appealed. On March 26, 2013, the CRB affirmed the findings of fact and conclusions of law in the August 31, 2012 Compensation Order on Remand.⁴

A review of the request submitted on June 27, 2013, reveals a lack of specificity over what statutory authority Counsel is relying upon and to whom counsel wishes the attorney fee to be assessed against. Without a clear understanding of what authority counsel is relying upon to award an attorney's fee and against whom, we are unable to grant the requested fee at this time.

Counsel's request for the assessment of an attorney's fee is **DENIED** at this time. Counsel may, within 30 days of the date of this order, resubmit a request for an attorney's fee identifying the statutory provision under which the award is sought and the party against whom it is sought to be imposed.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE,
Administrative Appeals Judge

July 25, 2013
DATE

³ *Alexander v. WMATA*, AHD No. 11-252, OWC No. 675308 (August 31, 2012).

⁴ *Alexander v. WMATA*, CRB No. 12-151, AHD No. 11-252 (March 26, 2013)