GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-153 (A)

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

ALMA ATKINS,
Claimant,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS
Employer.

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2015 MAY 22 PM 12 09

Harold L. Levi for Claimant
Frank Mc Dougald for Employer

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

LINDA F. JORY, for the Compensation Review Board:

ORDER GRANTING AN ATTORNEY FEE AWARD

In a Decision and Remand Order (DRO), the Compensation Review Board (CRB) agreed with The District of Columbia Department of Corrections (Employer) that a Compensation Order (CO) issued by the Administrative Hearings Division (AHD) awarded benefits based in part on **a** June 14, 1994 accident that was not properly before the Administrative Hearings Division. The DRO directed the Administrative Law Judge (ALJ) to reconsider the evidence in the record surrounding the November 19, 1993 injury only and award or deny benefits accordingly. The conclusion that the June 14, 1994 incident was not properly before AHD was based upon a determination that a Notice of Determination had not been issued regarding the June 14, 1994 accident.

The ALJ issued a Compensation Order on Remand (COR) on November 21, 2014. The ALJ concluded Claimant continues with remaining impairment to her lumbar and cervical spine and both knees as a result, wholly or in part, of her November 19, 1993 work injury. The ALJ further concluded Employer had failed to prove by a preponderance of the evidence that Claimant's benefits should be terminated.

Employer timely appealed and the CRB affirmed the **COR.** *Atkins v. D.C. Dept. of Corrections,* CRB No. 14-153, AHD No. PBL 12-102, DCP No. 7610320001-1999-0057 (March 25, 2015).

On April 9, 2015, Harold L. Levi, counsel for Claimant filed a fee petition. Mr. Levi requested the CRB approve a fee in the amount of $6000.00 for 25 hours of work at a rate of $240.00 per hour. Employer opposed the petition, asserting: (1) that counsel for Claimant did not provide evidence of the actual benefit secured; (2) 10.50 hours of work performed should be excluded because they were attributable to Claimant's first appeal and Employer was the successful party in the first appeal which was decided by the CRB on April 30, 2014. *Atkins v. District of Columbia Department of Corrections,* CRB No. 14-026, PBL 12-102, DCP No. 7610320001-1999-0057.

Counsel for Claimant filed a reply to Employer's Opposition and attached what counsel describes as a statement provided by Employer regarding the wage loss benefits it has paid to Claimant. Claimant's counsel asserts that as a result of the CRB's Decision and Order Claimant was paid $61,425 as of April 7, 2015. In response to Employer's assertion that 10.50 hours should be excluded as they were related to a prior appeal, Counsel for Claimant asserted:

> What is critical to Counsel's entitlement to fees is that Claimant was ultimately successful and the matter is no longer subject to appellate review. It matters not how many compensation orders were remanded and vacated or how many appeals it took to get to the successful outcome. Had Counsel not advocated for Claimant at each step along the way, Claimant never would have realized the successful prosecution of her claim as she did. Each step in the process took Claimant one step closer to where she now is—that is, to the restoration of her benefits and the payment of those benefits retroactively and prospectively as well.

The CRB finds no merit to Counsel for Claimant's argument.

D.C. Code § 1-623.27(b)(2) authorizes assessing reasonable attorney's fee against the government-employer when there has been a successful prosecution of a claim.[1]

Section 1-623.27 (b)(1) defines "successful prosecution of a claim" as:

> Obtaining an award of compensation that exceeds the amount that was previously awarded offered, or determined. The term "successful prosecution" includes a reinstatement or partial reinstatement of benefits which are reduced or terminated.

This statutory definition does not support Counsel for Claimant's theory that since Claimant was ultimately successful, Employer should be responsible for fees during litigation when Claimant was not successful.

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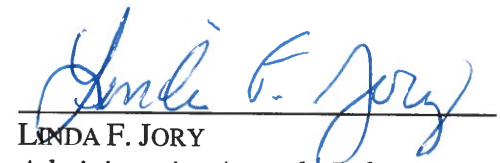
[1] D.C. Code § 1-623.27(b)(2) states: "If a person utilizes the services of an attorney-at-law in the successful prosecution of his or her claim under §1-623.24(b) or before any court for review of any actions, award, order, or decisions, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee, not to exceed 20% of the actual benefits secured, which fee award shall be paid directly by the Mayor or his or her designee to the attorney for the claimant in a lump sum within 30 days after the date of the compensation order."

Accordingly, we agree with Employer **that** fees should not be assessed for work performed by Counsel for Claimant for legal services performed during unsuccessful litigation. Therefore**, we** exclude 10.5 hours from the 25 hours claimed.

It is hereby **ORDERED**:

Subject to the condition that the total attorney fee awarded and payable for all work performed before the Office of Hearings and Adjudication's Administrative Hearings Division and the CRB is limited to and does not exceed twenty percent (20%) of the actual benefits secured as a result of Counsel's efforts, an award of a reasonable attorney's fee in the amount of $3,480.00 is assessed against Employer and is payable directly to Harold L. Levi, Esquire.

FOR THE COMPENSATON REVIEW BOARD:



LINDA F. JORY
Administrative Appeals Judge

May 22, 2015
DATE