

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-063

**ALMA ATKINS,
Claimant– Petitioner,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,
Employer-Respondent.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 SEP 14 PM 10 58

Appeal from an April 3, 2016 Order Awarding an Attorney’s Fee
by Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 12-012, DCP No. 76103-20001-1999-0057

(Decided September 14, 2016)

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

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

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER TO AMEND

FACTS OF RECORD AND PROCEDURAL HISTORY

This matter is an appeal of an Order Awarding an Attorney’s Fee (“the Order”) that was issued in the above noted case on April 3, 2016. The award was made following Claimant having prevailed at a formal hearing before an Administrative Law Judge (“ALJ”) in the Administrative Hearings Division (“AHD”) of the Department of Employment Services on January 31, 2014. *Atkins v. D.C. Dept. of Corrections*, AHD No. PBL 12-012, (January 21, 2014) (“CO”). The CO was appealed to the Compensation Review Board (“CRB”) and on April 30, 2014, the CRB issued a Decision and Remand Order which vacated the CO and remanded the matter for further proceedings.

A Compensation Order on Remand (“COR”) issued on November 21, 2014 which again awarded Claimant benefits. The COR was appealed to the CRB and on March 25, 2015, the November

21, 2014 COR was affirmed. *Atkins v. D. C. Dept. of Corrections*, CRB No. 14-153 (March 25, 2015) (“DO”). No further appeals were made.

Following the CRB’s DO, Claimant filed a Request for Re-affirmation of Attorney Fee Award Upon Issuance of Decision and Remand Order by The Compensation Review Board requesting ALJ award an attorney’s fee to be assessed against Employer. Employer filed an opposition on September 28, 2015. An Order Awarding an Attorney’s Fee issued on April 8, 2016 which ordered Employer to pay an attorney’s fee in the amount of \$15,360.00 to Counsel for successful representation of Claimant.

On May 5, 2016, Employer timely filed a timely Application for Review (“Employer’s Brief”) of the April 8, 2016 Order and Claimant filed an Opposition to Application for Review of Order (“Claimant’s Brief”) on May 16, 2016.

ANALYSIS

Citing the CRB’s decision in *Workcuff v. District of Columbia Housing Authority*, CRB No. 15-054 (September 24, 2015), Employer asserts:

The Order awarding attorney’s fees is contrary to law. First, the burden of proof is not met because the fee petition does not include “documentation to prove the actual benefits secured.” Instead of submitting documentary proof of actual benefits secured, the fee petition provides the following:

As a result of the COR, Claimant, a former medical technician, is now entitled to (1) back pay from November 18, 2011 to the present and continuing in the amount of approximately \$60,000, less any amounts previously paid following the issuance of the original compensation order; (2) the reimbursement of some \$13,325.43 of causally-related medications she had paid; (3) the payment of her doctors’ unpaid medical bills regarding her work injuries in an amount that Counsel cannot ascertain, and (4) the restoration of essential casually-related [sic] medical treatment that has been withheld now for more than two years and that is estimated to be approximately \$5,500 per year..

Fee petition at 2. Second, the Order awards attorney’s fees for work performed before filing the Application for Formal Hearing based on reviewing the Final Decision on Reconsideration and meeting with Claimant and members of her family. Fee petition at 3. Third, the Order awards attorney’s fees for work performed before the CRB.

Employer’s Brief at 3, 4.

Claimant responded explaining that she filed a resubmitted fee petition and a pay history from Employer that was current through January 29, 2015 and while Counsel also requested an

updated payment history which Employer never provided, Counsel provided sufficient documentation to demonstrate the actual benefits which Claimant has secured. Specifically, Claimant asserts:

Based upon the pay history provided and using Claimant's \$675.00 bi-weekly pay rate and including the \$33,515.80 lump sum payment made to her on March 19, 2014, as of September 30, 2015, Claimant demonstrated that she received or was entitled to receive a total of 104 bi-weekly payments totaling \$70,200.00 . . . Since September 30, 2015, Claimant has continued to receive bi-weekly TTD payments of least [sic] \$675.00. TTD payments of \$675.00 for the seven months since September 2015 total \$9,450.00 ($\$675.00 \times 2 \times 7$). 20% of \$9,450.00 is \$1,890.00 = \$15,930 which is greater than the amount of the fee award, such that the full amount due and owing can be paid upon the affirmation of the order awarding the \$15,360.00 fee.

Claimant's Brief at 2.

We conclude Claimant has met her burden of providing documentation to prove the actual benefits secured and reject Employer's argument in this regard. The Panel further finds Employer's argument that AHD's order is in error because the Order awards attorney's fees for work performed before filing the Application for Formal Hearing, is misplaced. We agree instead with Claimant's opposition that "As a matter of first priority Counsel had to review the [Final Determination on Reconsideration] in order to insure not only that Claimant filed a timely application for a hearing but that the ALJ had jurisdiction to convene the hearing." Claimant's Brief at 4. The Act is clear that the actual issuance of a Final Determination is a prerequisite to AHD's adjudication of the request for benefits. *See Graham v. D.C. Public Schools*, CRB No. 15-007 (May 19, 2015).

Employer filed Employer's Reply Memorandum to Opposition to Application for Review ("Employer's Reply") asserting:

A review of the "Resubmitted Fee Petition" (RFP) clearly shows work performed before the CRB. In that regard, two entries are noteworthy (1) 3/16/14 "research filing delay, motion for transfer; prepare initial draft of opposition to appeal; review record, oppose PFR" [sic] 5.50 hours and (2) 3/25/14, "[m]eeting with Atkins; complete appeal" 4.00 hours. The RFP includes other entries for work performed before the CRB. In Claimant's, it is argued that "[n]othing in Counsel's statement evidences that he sought fees for legal services performed before the CRB". Opposition at 5. That statement is clearly contrary to entries set forth in the RFP. Accordingly, the Order should be reversed and vacated.

Employer's Reply at 1, 2.

Thereafter, Claimant filed on June 8, 2015, a Notice of Claimant Error, ("Notice") wherein Counsel for Claimant conceded that in fact that 9.50 hours of work expended before the CRB had been included in the fee petition that the Office of Hearings and Adjudications (OHA) (also

referred to as AHD approved for \$15,360.00. Claimant asks the CRB to modify the order issued by OHA. Counsel for Claimant explained:

Counsel attempted to resolve the error promptly by writing counsel to [sic] Employer agreeing to a reduction of the OHA fee award in the amount of \$2,280 (9.50 x \$240.00). Employer's counsel has not responded. Counsel asks the CRB to acknowledge Counsel's error and order the reduction of the OHA fee by the erroneous \$2,280.00 amount.

Counsel respectfully asks the CRB to amend the order awarding Counsel a fee of \$15,360.00 by decreasing the award by \$2,280. The resulting fee award would be \$13,080.00. Amending the order is consistent with the acknowledgement of the error and is in accordance with Section 2267.1 (c) of the Compensation Review Board's Rules. Vacating, denying or reversing the award in its entirety would be punitive for the acknowledge error.

Notice at 1, 2.

CONCLUSION AND ORDER

Inasmuch as Claimant concedes an error was made in her submission and since a remand to AHD would be superfluous as there is but one action left, pursuant to DCMR §7-267.5, we hereby amend the Attorney Fee Award issued by AHD to reduce the amount of fee for work at the AHD level assessed against Employer to \$13,080.00. We further conclude the remainder of the award is in accordance with the law and is affirmed

So ordered.