

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH CARROLL
DIRECTOR

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 DEC 9 AM 10 57

COMPENSATION REVIEW BOARD,

CRB No. 15-102(A)

**DAVID E. ROBINSON,
Claimant–Respondent,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH REHABILITATION SERVICES,
Employer–Petitioner.**

In re: November 17, 2015 Application for Attorney’s Fees
AHD No. PBL 13-007, DCP No. 761011-0008-1999-0004

(Decided December 9, 2015)

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

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

LINDA F. JORY for the Compensation Review Board.

ORDER AWARDING AN ATTORNEY’S FEE

FACTS OF RECORD AND PROCEDURAL HISTORY

A Formal Hearing occurred on March 21, 2013. At that hearing, Claimant sought reinstatement of his medical benefits and temporary total disability benefits from October 11, 2012 to the present and continuing. A Compensation Order was issued on August 29, 2013 which ordered reinstatement of Claimant’s disability compensation benefits. Employer appealed the Compensation Order to the CRB.

A Decision and Remand Order was issued on December 5, 2013. *Robinson v. District of Columbia Department of Youth Rehabilitation Services*, CRB No. 13-114, AHD No. PBL No. 13-007, DCP No. 76011-0008-1999-0004 (December 5, 2013). A Compensation Order on Remand (COR I) was issued on December 4, 2014. The ALJ granted Claimant’s claim for relief. Employer appealed the December 4, 2014 Compensation Order. On May 5, 2015, the CRB issued a Decision and Remand Order. *Robinson v. District of Columbia Department of Youth*

Rehabilitation Services, CRB No. 15-001, AHD No. PBL No. 13-007, DCP No. 76011-0008-1999-0004 (May 5, 2015).

A Compensation Order on Remand was issued by AHD on May 22, 2015. Claimant's claim to reinstate his temporary total disability (TTD) benefits and medical care from October 11, 2012 to the present and continuing was granted. Employer again appealed and a Decision and Order issued on November 13, 2015 which affirmed the Compensation Order on Remand.

On November 17, 2015, Harold L. Levi (Mr. Robinson's attorney) filed a fee petition. Mr. Levi requested the CRB approve a fee in the amount of \$9,420.00 for 39.25 hours of work at a rate of \$240.00 per hour. In support thereof, Mr. Levi asserts that as a result of his efforts, Employer has paid Claimant wage loss benefits in two lump sum payments totaling \$49,976.99 in addition to 28 bi-weekly TTD payments of \$992.28 totaling \$27,783.44 for a total of \$77,760.83.

Employer filed "Employer's Opposition to Fee Petition" on December 2, 2015 asserting:

The hours requested by Claimant are not reasonable because they are excessive. With respect to the third appeal, Claimant's FP show that 18.50 hours were expended. In the first and second appeals, Claimant expended 9.75 hours and 11.00 hours respectively. The issues in the third appeal were not substantially different than the issues in the first and second appeals and therefore, incurring 18.50 hours was unwarranted and excessive. Similarly, the 4 hours expended for "Conference with Robinson" in the third appeal are excessive when compared to the first and second appeals where 1.50 hours and .50 hours were expended respectively. While it is expected that counsel will consult with his or her client, in this matter the hours of consultation with respect to the third appeal when compared to the first and second appeals are excessive. Further, an examination of Claimant's itemization of work performed demonstrates excessiveness. In that regard, Claimant has an unusual entry dated August 19, 2015, for "Verification of CRB matter" where Claimant has charged .50 hours. Also Claimant has three separate charges for the preparation of statement of facts, one dated 10/1/13 (2.75), another dated 1/6/15 (1.50) and the last one dated 6/24/15 (2.25). The statement of facts for the second and third appeals was essentially the same as was presented in the first appeal and thus the hours charged for that task in the second and third appeals were excessive.

Employer's Brief at 3, 4.

Employer's subjective assertions that the charges are excessive are not persuasive. Particularly we reject Employer's assertion that the statements of facts prepared by Mr. Levi are essentially the same and thus the hours charged for preparing the second and third are excessive. We have reviewed the statements of facts prepared by Mr. Levi and we find them to be considerably varied and not duplicative. Accordingly, we do not find the charges for preparing them to be excessive.

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 Mr. Levi's efforts with respect to the issues arising from AHD No. PBL13-007 and DCP No. 761011-0008-1999-0004, an award of a reasonable attorney's fee in the amount of \$9420.00 for 39.25 hours of work at a rate of \$240.00 per hour is assessed against Employer and is payable directly to Harold L. Levi, Esq.

So ordered.