

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-035(A)

BILIKISU DAWODU,
Claimant,

v.

HOWARD UNIVERSITY HOSPITAL and SEDGWICK CMS,
Employer/Carrier.

AHD No. 11-327, OWC No. 665917

Michael H. Daney, Esquire, for the Petitioner
Benjamin T. Boscolo, Esquire, for the Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL,¹ and HENRY W. MCCOY, *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

ORDER AWARDING ATTORNEY FEE

Ms. Bilikisu Dawodu worked for Howard University Hospital as a registered nurse. On November 28, 2009, a patient's spouse assaulted Ms. Dawodu at work.

Within two days of the assault, Ms. Dawodu began treating with Dr. Eric Dawson for cervical and lumbar injuries. Dr. Dawson consistently certified Ms. Dawodu as unable to return to her pre-injury work as a result of her work-related injuries.

On February 3, 2011, Dr. David Johnson evaluated Ms. Dawodu on Howard University Hospital's behalf. Dr. Johnson could not find any objective findings to support Ms. Dawodu's subjective complaints.

On March 4, 2011, Howard University Hospital terminated voluntary payments of temporary total disability benefits, and Ms. Dawodu requested a formal hearing. In a Compensation Order dated February 1, 2012, an administrative law judge ("ALJ") granted Ms. Dawodu temporary total disability benefits from March 5, 2011 to the date of the formal hearing and continuing as well as causally-related medical expenses.

¹ Judge Russell has been appointed a temporary CRB member pursuant to the Department of Employment Services' Director's Administrative Policy Issuance No. 12-01 (June 20, 2012).

On appeal, Howard University Hospital took issue with the weight the ALJ afforded the opinions of Ms. Dawodu's treating physician. Ms. Dawodu opposed the appeal on the grounds that Howard University Hospital impermissibly requested a re-weighting of the evidence when substantial evidence in the record supported the findings of fact and the conclusions were in accordance with the law; Ms. Dawodu also asserted the opinion of Dr. Johnson was not sufficient to rebut the presumption of compensability.

On June 28, 2012, the CRB issued a Decision and Order affirming the February 1, 2012 Compensation Order. One judge concurred with the result.

On September 12, 2012, Claimant's Counsel filed a letter requesting the assessment of an attorney fee against Howard University Hospital. Specifically, Benjamin T. Boscolo, Esquire requests an attorney fee in the amount of \$1,912.50 for work performed before the CRB.

Howard University Hospital objects to paying for Claimant's counsels' time spent on vocational services because vocational rehabilitation was not an issue before the CRB. Howard University Hospital requests a reduced fee be awarded in the amount of \$1,650.00.

Pursuant to 7 DCMR §269.3, an attorney fee application shall contain all of the information specified in 7 DCMR §224. Section 224.2 states

In determining whether to award attorney fees and the amount, if any, to be awarded, the following factors shall be considered:

- (a) The nature and complexity of the claim including the adversarial nature, if any, of the proceeding;
- (b) The actual time spent on development and presentation of the case;
- (c) The dollar amount of benefits obtained and the dollar amount of potential future benefits resulting from the efforts of an attorney;
- (d) The reasonable and customary local charge for similar services; and
- (e) The professional qualifications of the representative and the quality of representation afforded to employee.

To aid the fee adjudicator in considering these factors, counsel is required to submit an application in conformance with §224.3 of the regulations which specifically requires that an application for an attorney fee include the following information:

- (a) A complete statement of the extent and character of the necessary work done, described with particularity as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing the work;

- (b) The normal billing rate in the area for the work; and
- (c) The hours devoted by each person to each category of work.

It is also reasonable to expect counsel to provide any additional information that would likely assist in considering the application, such as a statement of the basis for assessing an attorney fee and an accounting of benefits obtained as a result of the professional efforts.

Claimant’s Counsel’s letter states “we” expended twelve and three-fourths (12.75) hours at a normal billing rate of One Hundred Fifty Dollars and No Cents (\$150.00) per hour for development and presentation of the claim before the CRB. The problem with this request is that Claimant’s Memorandum of Points and Authorities in Opposition to Employer’s Application for Review was filed by Krista DeSmyter, Esquire, not Benjamin Boscolo, Esquire. As a result, from a review of the cursory itemization of time submitted with the letter, we are unable to ascertain “the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing the work;” however, given that Howard University Hospital has not objected to this issue, we accept the work was performed by Ms. DeSmyter at an hourly rate of \$150.00.

We agree with Howard University Hospital that vocational rehabilitation was not an issue before the CRB. As a result, we disallow the following time entries:

3/30/12	Rec’d voc rehab report	.25
4/4/12	Rec’d email from voc counselor re: status on case	.25
4/11/12	Rec’d email from voc counselor re: status on case	.25
4/20/12	Rec’d voc rehab report	.25
5/9/12	Rec’d email from voc counselor re: voc rehab	.25
5/16/12	Rec’d 2 nd email from voc counselor re: voc rehab process	.25
6/14/12	Rec’d email from voc counselor re: computer classes	.25

Although there are several other entries which are ambiguous as to whether or not they also apply to vocational rehabilitation, Howard University Hospital has not objected to those charges.

Upon careful review of the record pertaining to this proceeding, including the letter requesting an attorney fee, and in consideration of D.C. Official Code §32-1530, 7 DCMR §§224 and 269 *et. seq.* 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 fee awarded and payable for all work performed before the Office of Workers' Compensation, the Administrative Hearings Division, and CRB of the D.C. Department of Employment Services is limited to and does not exceed twenty percent (20%) of the actual benefits secured as a result of Claimant's counsels' efforts with respect to the issues arising from OWC No. 665917, OHA No. 11-327, and CRB No. 12-035, as provided by the D.C. Official Code §32-1530(f) and 7 DCMR §224, an award of a reasonable attorney fee in the amount of \$1,650.00 is assessed against Howard University Hospital and Sedgwick CMS and is payable directly to Benjamin Boscolo, Esquire.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

September 27, 2012
DATE