

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
Compensation Review Board

(202) 671-1394 -Voice
(202) 673-6402 - Fax



CRB No. 04-44

ANTHONY GOODEN,

Claimant – Petitioner,

v.

The Washington Post,

Self-Insured Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Karen R. Calmeise
OHA No. 04-44; OWC No. 279073

Jenifer S. Goolie, Esq., for the Petitioner

John F. Ward, Esq., for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, SHARMAN J. MONROE and
FLOYD LEWIS, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

ORDER AWARDING ATTORNEY’S FEE

JURISDICTION

Claimant-Petitioner (Petitioner) files this request for an attorney’s fee in the amount of \$6,385.15 for 40.55 hours of work at the hourly rate of \$160.00 performed in this case at the administrative appellate level, plus costs amounting to \$33.15. Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director’s Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the

Pursuant to a Compensation Order issued by the Office of Hearings and Adjudication (OHA), now the Administrative Hearings Division (AHD), on March 14, 2003, the Petitioner was awarded permanent total disability effective February 9, 2001. On April 12, 2004, Petitioner filed an Application for Review which appealed the commencement date of the award of permanent total disability and argued it should begin September 22, 1997 and not on February 9, 2001. The Application also appealed the Administrative Law Judge's refusal to grant Petitioner a hearing on his April 2, 2003 request for reconsideration. On June 29, 2005, the CRB issued a Decision and Order which determined that September 22, 1997 is the correct effective date on which Petitioner's permanent total disability compensation should begin.

In a letter dated September 26, 2005, Attorney for Petitioner filed a request for attorney's fees for work performed before the Compensation Review Board (CRB). On October 11, 2005, Attorney for Employer filed an opposition to Petitioner's Request for Attorney Fees. Self-Insured Employer-Respondent (Respondent) alleges that some of the work on Petitioner's behalf was either not performed before the CRB or had no bearing on the proceedings before the CRB, which involved the sole issue decided on appeal--the date that Petitioner's permanent total disability began. A review of the request for fees indicates that Respondent's opposition has merit.

There is direction regarding the fee structure for attorney representation in workers' compensation cases. The May 12, 2005 Policy Directive Clarifying the Award of Attorney Fees in the District of Columbia Workers' Compensation Cases states that several requirements should be considered. In D.C. Official Code § 32-1530, a reasonable attorney's fee is permitted, "provided the fee award does not exceed 20% of the actual benefit secured through the efforts of the attorney." Other requirements mandated by the interpretation of the relevant D.C. Official Code cite by 7 DCMR § 224 are:

- (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 [the] employee.

Pursuant to the aforementioned Policy Directive, an attorney may be awarded attorney's fees ranging from a minimum of \$120.00 per hour for attorneys with two (2) years or less of practice experience in workers' compensation law, to a maximum of \$240.00 per hour for

Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

attorneys with twenty (20) years of practice experience. Petitioner's request for attorney's fees at an hourly rate of \$160.00 is on the low end of the applicable range and is reasonable. This reasonableness is also supported by the fact that Employer has raised no objection to the hourly fee.

Despite Attorney for Petitioner's notation in the fee petition that there was no charge for services rendered on September 13, 2004, amounting to .10 hours, that charge was included in the calculations for the total amount of fees requested. Thus, instead of reviewing the request for a total of 40.55 hours of services, the fee petition is reduced by .10 hours and will be reviewed for a total of 40.45 hours of services rendered. The Panel agrees with Respondent that entries for services rendered prior to April 14, 2004, the date the Application for Review was filed before the CRB, for 21.75 hours, should not be allowed. In addition, a March 21, 2005 charge for .35 hours, should not be allowed because the service, responding to a phone call about another lawsuit, was not rendered regarding the instant claim. Contrary to Respondent's assertion, services rendered on August 15, 2005 for .40 hours and on August 24, 2005 for 1.00 hour should be allowed. Those charges represent work done by the attorney, after being told she no longer represented the Petitioner, to return requested files and information to the Petitioner. As pointed out by Respondent, although two (2) issues were presented to the CRB, the resolution of one of the issues rendered the other issue moot. Thus, the level of complexity of the claim was diminished.

Therefore, considering all relevant factors, this Panel determines that a more reasonable amount of time for representation in this case is 18.35 hours at \$160.00 per hour, which equals \$2,936.00. Only the cost of \$27.65 on April 12, 2004, the day the Application for Review was filed, is allowed. The additional charges of \$4.00 on December 11, 2003 and of \$1.50 on December 22, 2003, are disallowed because they occurred before the Application for Review was filed before the CRB.

ORDER

The Respondent is hereby ordered to pay an attorney's fee in the amount of \$2,936.00 for 18.35 hours of work at \$160.00 per hour, plus costs of \$27.65, subject to the statutory 20% limitation.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

April 26, 2006
DATE