

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-009

KIMBERLY TOMLIN,
Claimant-Respondent,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,
Employer -Petitioner.

Appeal from a December 23, 2013 Order of
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 12-013, ORM/DCP No. 30080945683-0001

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 APR 30 PM 12 04

Corey P. Argust, for the Petitioner
Krista N. DeSmyter, for the Respondent

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

JEFFREY P. RUSSELL, for the Compensation Review Board,

DECISION AND REMAND ORDER

BACKGROUND

Petitioner contested Respondent's entitlement to benefits under the D.C. Code § 1-623.01, *et seq.*, the Public Sector Workers' Compensation Act (PSWCA). The dispute was brought for resolution at a formal hearing before an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES). The ALJ ultimately issued a Compensation Order awarding benefits to Respondent. Petitioner appealed the Compensation Order to the Compensation Review Board (CRB), and on August 22, 2013, the CRB upheld the Compensation Order. No appeal of the CRB Decision and Order was taken to the District of Columbia Court of Appeals.

On October 30, 2013 Respondent through counsel filed with AHD a Petition for an Award of an Attorney's Fee, seeking an award of \$6,085.24, to which Petitioner filed an opposition to the award of any fee, or in the alternative, a seeking an award of a fee in an amount less than that sought.

On December 23, 2013, the ALJ issued an "Order Awarding an Attorney's Fee", awarding a fee in the amount of \$4232.00 and unspecified costs.

Petitioner appealed the “Order Awarding an Attorney’s Fee” to the Compensation Review Board (CRB). Respondent has not filed in opposition to the appeal.

For the reasons given below, we vacate the ALJ’s determination to reduce the amount of the fee amount of the fee to be awarded if in fact a fee is owed, vacate the award itself and remand for further elucidation and discussion, including consideration of the objections to the petition raised before the ALJ but which objections the ALJ failed to address.

STANDARD OF REVIEW

As an initial matter, in its review of an appeal from the Administrative Hearings Division (AHD) in connection with a request for an award of attorney’s fee, a proceeding in which no record is created, the CRB must affirm said decision unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See*, 6 Stein, Mitchell & Mezones, ADMINISTRATIVE LAW § 51.03 (2001).

DISCUSSION AND ANALYSIS

Regarding the ALJ’s reductions in the dollar amount of the earned fee, while the ALJ gave a specific reason for rejecting one (1) time entry. i.e., lack of specificity regarding the services provided by the “Case Manager” status review, he also wrote that “After reviewing the itemization the undersigned finds that including the case manager hours in the calculation of an attorney’s fee is unreasonable and accordingly will deduct them from the Petition”.

From this language, it appears that the ALJ may be assuming that “case manager” hours are not to be considered in any calculation of the amount of a fee earned. However, it has long been the practice of this agency to permit inclusion of “case manager” services in the fee calculation. *See*, *Palmerton v. Parsons Co.*, CRB No. 08-005, AHD No. 05-016, OWC No. 586530 (December 31, 2007); *Steadman v. UPS*, CRB No. 05-062, AHD No. 00-384A, OWC No. 538919, (December 14, 2005). While we recognize that these cases did not involve the PSWCA, but rather arose under the private sector District of Columbia Workers’ Compensation Act, D.C. Code § 32-1501, *et seq.*, to the extent that either act permits assessment of an attorneys’ fee, we see no reason why case manager services should be treated differently under one act than the other.

Accordingly, the blanket elimination of case manager time from consideration is deemed not in accordance with the law.

Further, the ALJ identified at least four additional specific objections to the fee petition raised by Petitioner: that it was untimely, that it lacked evidence of the amount of benefits obtained, that the amount requested exceeded the statutory limit of 20% of benefits obtained, and that it requested an unauthorized award of interest.

However, the ALJ did not address these issues. A party is entitled to have all of its legitimate arguments considered and addressed in an agency decision, and the failure to do so renders such an

order arbitrary and capricious. Accordingly, the award is vacated and the matter remanded for further consideration.

CONCLUSION AND ORDER

The blanket exclusion of consideration of case manager hours from the attorney fee calculation, and the failure to consider all the arguments of Petitioner in opposition to the requested award renders the award arbitrary, capricious and not in accordance with the law. The order is vacated and the matter remanded for further consideration in a manner consistent with the foregoing Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:



JEFFREY P. RUSSELL
Administrative Appeals Judge

April 30, 2014

DATE