

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. 08-005

LINDA F. PALMERTON,  
Claimant – Petitioner,

v.

PARSONS CORPORATION AND AIG CLAIM SERVICES, INC.,

Employer/Carrier – Respondent.

Appeal from an Order Awarding Attorney Fees on Remand of  
Administrative Law Judge Gerald D. Roberson  
AHD No. 05-016, OWC No. 586530

Benjamin T. Boscolo, Esq., for the Petitioner

Michael S. Levin, Esq., for the Respondent

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

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

**DECISION AND REMAND ORDER**

**JURISDICTION**

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).<sup>1</sup>

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<sup>1</sup> 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 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

## BACKGROUND

This appeal follows the issuance of an Order Awarding Attorney Fees on Remand from the Administrative Hearings Division (AHD), Office of Hearings and Adjudication (OHA), District of Columbia Department of Employment Services (DOES). In that Order, which was filed on September 14, 2007, the Administrative Law Judge (ALJ) ordered Employer-Respondent (Respondent) to pay attorney's fees in the amount of \$3,900, case manager fees in the amount of \$ 1,297.50, and costs in the amount of \$1116.54, subject to the limitations of D.C. Official Code § 32-1530. Claimant-Petitioner (Petitioner) filed an Application for Review on October 15, 2007 seeking review of that Order.

As grounds for this appeal, Petitioner asserts as error that the Order is not in accordance with applicable law.<sup>2</sup>

## ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. D.C. Official Code § 32-1521.01(d)(2)(A). "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. D.C. Department of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review herein, Petitioner argues that an award of fees is not limited to the lodestar, which is a figure arrived at by multiplying the hours work by the hourly rate. Petitioner asserts that the ALJ must take into consideration the factors in 7 DCMR § 224.2 to determine whether to enhance, up to no more than 20% of the benefit secured, the fee established by the lodestar. The Petitioner cites *Powell, Goldstein Frazier & Murphy v. D.C. Department of Employment Services*, No. 05-AA-991 (Memorandum Opinion and Judgment, June 26, 2007)(hereinafter, *Powell*) as support for her assertions.

This is the second time that this matter has been before the CRB. On January 5, 2006, the CRB remanded the fee award to AHD because the ALJ's unexplained exclusion of 3.15 hours of attorney time and 26.50 hours of case manager time was arbitrary, and the ALJ's exclusion of

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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.

<sup>2</sup> Although Petitioner's request for an extension of time to file a Memorandum in Support of her Application for Review was granted, the file does not contain such a Memorandum.

attorney's fees and case manager fees for administrative charges and travel time was deemed an abuse of discretion. *See Palmerton v. Parsons Corporation*, CRB No. 05-016 (January 5, 2006). The prior Review Panel acknowledged that while the question of whether the attorney hours are unreasonably charged depends on the individual facts of a case and the task of determining the reasonableness of the legal hours expended is uniquely within the ALJ's discretion, the Panel explained that without a detailed explanation as to why the hours expended are not reasonable, a reviewing authority is unable to ascertain whether that discretion was properly applied or abused, and a remand for the explanation is necessary. The Panel directed the ALJ to reconsider the fee petition, taking into consideration the factors of 7 D.C.M.R. § 224 along with the factors from *Frazier v. Franklin Investment Co.*, 468 A.2d 1338 (D.C. 1983), and to provide an explanation for any amounts found not to be reasonable.

At the outset, this Review Panel determines that Petitioner's reliance on *Powell* is misplaced. In *Powell*, the Court of Appeals did not state that an ALJ must consider whether to enhance an attorney's fee gathered via the lodestar, presumably through use of the factors of 7 D.C.M.R. § 224. Rather, the Court acknowledged that the CRB acted within its discretion in demanding more analysis of the factors than the ALJ therein had provided, and directed the CRB to remand the matter to the ALJ for such analysis, as opposed to vacating the fee awarded and setting the fee award itself. Herein, the ALJ indicated that the factors were considered.

With respect to the Order currently on appeal, the ALJ, consistent with the prior remand, provided a detailed explanation for reducing the case manager charge of .50 hours for the submission of letters, for reducing the case manager charge for work done on October 7, 2004, December 3, 2004 and December 23, 2004, and for reducing attorney charge for 24 instructions to the case manager and notifications to the Petitioner. *See Order* at pp. 2-3. On review, the Panel determines that the ALJ's reduction was reasonable and that he did not abuse his discretion in reducing the fees requested in these areas. The ALJ, however, did not provide a detailed explanation for reducing by 12.75 hours and by 2.75 hours charges of the case manager, other than to state that the charges were "excessive, redundant and of an administrative nature". *See Order* at p. 2. As stated in the January 5, 2006 Decision and Order, such a basis, without more of an explanation, renders that portion of the fee award unreviewable, constituting an abuse of the ALJ's discretion and warranting a reversal. In other words, an unsubstantiated conclusion will not suffice to show reasonableness.

#### CONCLUSION

The Order Awarding Attorney Fees on Remand of September 14, 2007 is, in part, not in accordance with the law.

**ORDER**

The Order Awarding Attorney Fees on Remand of September 14, 2007 is hereby VACATED AND REMANDED IN PART.

On remand, the ALJ is instructed to provide a detailed explanation for the reduction of 12.75 hours and 2.75 hours of work performed by the case manager.

All other aspects of the Order Awarding Attorney Fees on Remand are AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

  
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SHARMAN J. MONROE  
Administrative Appeals Judge

December 31, 2007  
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DATE