

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB 12-162 (A)

**MAXINE MOCK-LIGGINS,
Claimant-Petitioner,**

v.

**LINENS OF THE WEEK
and LIBERTY MUTUAL INSURANCE COMPANY,
Employer and Insurer, Respondent.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 MAY 30 PM 12 20

Richard W. Galiher, Jr. for Claimant
Curtis B. Hane for Employer and Insurer

Before: LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, HENRY W. MCCOY and
JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

LAWRENCE D. TARR for the Compensation Review Board.

DECISION AND ORDER AWARDING ATTORNEY FEE

This case is before the Compensation Review Board (CRB) on the May 13, 2013 Application filed by Claimant's attorney seeking an assessment of an attorney fee against Employer for legal services performed before the CRB in connection with the CRB's February 11, 2013 Decision and Remand Order. For the reasons stated herein, we award counsel a fee of \$1,256.42.

BACKGROUND AND FACTS OF RECORD

Claimant, Ms. Mock-Liggins, sustained injuries to her neck, back and shoulder in an accident at work on December 10, 1999. On February 16, 2012, an Administrative Law Judge (ALJ) awarded her permanent and total disability benefits.

After this litigation ended, Claimant's counsel filed an application with the ALJ seeking an Award of Attorney's Fees and Costs against Employer. The costs sought were for the deposition of Claimant's treating doctor, Dr. Kevin McGovern and for the deposition and attendance at the formal hearing of Dr. Richard Bussey, a vocational and rehabilitation counselor who testified on behalf of Claimant.

The ALJ awarded counsel most of the attorney fee requested and all of the cost of Dr. McGovern's deposition. The ALJ denied the entire request for the cost of Dr. Bussey's deposition and attendance at the formal hearing. *Mock-Liggins v. Linens of the Week*, Order Awarding an Attorney's Fee, AHD No. 11-382, OWC No. 553404 (September 7, 2012).

Claimant appealed to the Compensation Review Board (CRB). The CRB held the ALJ should have awarded the costs associated with Dr. Bussey's deposition and hearing attendance. *Mock-Liggins v. Linens of the Week*, CRB No. 12-162, AHD No. 11-382, OWC No. 553404 (February 11, 2013).

In her remand order, the ALJ entered an Order that included an award of \$6,282.20 for Dr. Bussey's deposition and hearing attendance. *Mock-Liggins v. Linens of the Week*, Order Awarding Attorney's Fee on Remand, AHD No. 11-382, OWC No. 553404 (September 7, 2012).

On May 13, 2013, Claimant's counsel petitioned the CRB for an award against Employer for the legal services associated with his work before the CRB that resulted in the Decision and Remand Order.¹

Claimant's counsel represents that he spent 12 hours of legal work. Counsel further asserts he is seeking \$1,256.46, not \$2,880.00 which would be the fee using the usual rate of \$240 per hour. The lower amount is sought because of the 20% limit on such fees

DISCUSSION

As to whether a fee is appropriate, the CRB held in its February 11, 2013 Decision and Remand Order:

Second, it seems counter-intuitive to suggest that retaining a vocational rehabilitation and labor market expert is not a reasonable and necessary practice in a claim for permanent total disability, particularly given that in this jurisdiction the nature and extent of a disability is a vocational concept that is informed by, but not determined by, a claimant's medical condition. See, *Negussie v. DOES*, 915 A.2d 391 (D.C. 2007); and *Logan v. DOES*, 805 A.2d 237 (D.C. 2002).

¹ Employer's response to the May 13, 2013 application was due within 15 days. On June 28, 2013, Employer filed a motion to extend the time in which to file a response to claimant's counsel's application because he was out of the country when the application was filed. Employer also filed its Opposition that day. Claimant's counsel has objected to Employer's motion and consideration of the Opposition.

The CRB requires that motions to extend time for filing documents be filed before the date in which the document is due. Therefore, Employer's motion is denied. The CRB will not consider Employer's opposition.

Although the ALJ states in the order that she never referred to Dr. Bussey's testimony in coming to her conclusions, that is not the standard that determines whether an award of a fee is appropriate. We find the ALJ should have awarded a fee because Dr. Bussey's testimony was reasonably related to the issue(s) before the ALJ.

As to the amount requested, 7 DCMR § 269.1 of the CRB's regulations provide:

No legal fee for services rendered on behalf of a claimant in the successful pursuit or successful defense of an award shall be valid unless approved pursuant to 7 DCMR section 109 in the case of Public Sector appeals or 7 DCMR section 224 in the case of Private Sector appeals.

7 DCMR § 224, in relevant part, states:

224.1 In accordance with § 31 of the Act (§ 36-330, D.C. Code, 1981 ed.), this section shall govern the award of attorney fees in all proceedings under the Act.

224.2 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.

When judged against this standard, we find the attorney fee application and the amount requested are appropriate.

CONCLUSION AND ORDER

Claimant's counsel's request for an attorney's fee in the amount of \$1,256.46 for services performed on Claimant's behalf before the CRB is approved, and is assessed against, and payable by, the employer and carrier.

FOR THE COMPENSATION REVIEW BOARD:



LAWRENCE D. TARR

Chief Administrative Appeals Judge

May 30, 2014

DATE