

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 10-167(A)

In Re: Application for Approval of an Attorney's Fee Assessment

FELIX ROMERO,

Claimant,

v.

ROMERO CONSTRUCTION, INC. AND COMMERCE & INDUSTRY,

Employer and Carrier.

Manuel Rivera, Esquire for the Claimant
Thomas G. Hagerty, Esquire for the Employer

Before: HEATHER C. LESLIE, MELISSA LIN JONES, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*,

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

ORDER DENYING ATTORNEY'S FEE

On March 21, 2013, Claimant's attorney filed an application for an attorney's fee, requesting the Compensation Review Board (CRB) assess against the employer and insurer an attorney's fee totaling six thousand seventy seven dollars and fifty cents (\$6,077.50) for 24.31 hours of work, billed at \$250.00 per hour that was asserted to have been performed by Claimant's counsel in this appeal before the Compensation Review Board.

An Order to Show Cause was issued on March 26, 2013 ordering the employer and insurer Romero Construction, Inc. and Commerce and Industry show cause why an attorney's fee in the total sum of six thousand seventy seven dollars and fifty cents (\$6,077.50) for work performed before the Compensation Review Board by Claimant's counsel should not be approved, awarded and assessed as requested by the fee application. The Employer was ordered to respond on or before April 5, 2013.

On April 5, 2013, the Employer filed an Objection to the Application for an Attorney Fee Assessment. The Employer argues in essence that counsel overstated the amount secured by his representation, that counsel failed to comply with 7 DCMR §§ 224, and that counsel overstated the amount of time expended in front of the CRB.

Preliminarily we must note that Claimant's Counsel is requesting an hourly rate of \$250.00 and refers to the May 12, 2005 *Department of Employment Services Policy Directive Clarifying the Award of Attorney Fees in Workers Compensation Cases*. A review of the directive document reveals that the maximum rate allowed is \$240.00 applicable to attorney's with more than 20 years experience. Thus, Claimant's assertion that he is entitled to \$250.00 per hour is in error.

A review of the evidentiary file reveals the case proceeded to a Formal Hearing on April 6, 2010. The Claimant sought a determination of his average weekly wage, temporary total disability from December 26, 2008 to September 11, 2009, a 10% penalty due to Employer's alleged lack of timely controversion, and permanent partial disability to the right leg of 18%. The issues presented were whether the Employer failed to timely controvert the Claimant's claim, determination of the Claimant's average weekly wage, and the nature and extent of the Claimant's disability.

A Compensation Order issued on August 23, 2010 which found the Claimant's average weekly wage to be \$1,550.00 and awarded temporary total disability from December 26, 2008 to September 11, 2009, and permanent partial disability to the right leg of 15%. The ALJ denied the Claimant's request for penalties.

The Employer timely appealed on September 22, 2010. On October 31, 2011, a Decision and Remand Order was issued directing the ALJ to reconsider the nature and extent of the Claimant's disability under the proper standard of proof, that of a preponderance of the evidence.

A Compensation Order on Remand was issued on November 26, 2012. That Order awarded temporary total disability from December 26, 2008 to September 11, 2009, and permanent partial disability to the right leg of 15%. No party appealed that order to the CRB.

In reaching a determination of an appropriate attorneys' fees award pursuant to D.C. Code §§ 32-1530. Attorney fees [Formerly § 36-330]

(a) If the employer or carrier declines to pay any compensation on or before the 30th day after receiving written notice from the Mayor that a claim for compensation has been filed, on the grounds that there is no liability for compensation within the provisions of this chapter, and the person seeking benefits thereafter utilizes the services of an attorney-at-law in the **successful prosecution** of his claim, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee against the employer or carrier in an amount approved by the Mayor, or court, as the case may be, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum after the compensation order becomes final. (Emphasis added.)

The August 23, 2010 Compensation Order granted in part the Claimant's claim for relief. It was the Employer that filed an Application for Review with the CRB. In response to the Application for Review filed by the Employer, the CRB determined that the CO was not in accordance with the law and remanded the case back to the ALJ. It was the Employer, not that Claimant, that was successful in the prosecution of that appeal before the CRB.

Because the Claimant's attorney was not successful in the prosecution of this matter before the CRB, the CRB is without authority to award him an attorney's fee for work performed before this tribunal. Counsel's request for the assessment of an attorney's fee is **DENIED**.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE,
Administrative Appeals Judge

April 23, 2013
DATE