

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE A. DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-124 (A) (2)

RONALD WARD,
Claimant,

v.

DISTRICT OF COLUMBIA HOUSING AUTHORITY
Employer.

On Reconsideration of Claimant's Revised Fee Application
AHD No. PBL 12-055, DCP No. 3011026526

(Issued February 2, 2016)

Harold L. Levi for the Claimant
Andrea G. Comentale and Frank McDougald for the Employer

Before LINDA F. JORY, HEATHER C. LESLIE and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

ORDER ON RECONSIDERATION AWARDING ATTORNEY'S FEE

Following a Formal Hearing, an administrative law judge ("ALJ") issued a Compensation Order denying Claimant disability benefits and payment of medical expenses. *Ward v. District of Columbia Housing Authority*, AHD No. PBL 12-055A, DCP No. 3011026526 (July 23, 2015). Claimant appealed and the Compensation Review Board ("CRB") reversed and remanded the Compensation Order. *Ward v. District of Columbia Housing Authority Ware v. District of Columbia Department of Corrections*, CRB No. 15-124, (December 30, 2015).

A Compensation Order on Remand ("COR") issued by the Administrative Hearings Division ("AHD") on September 16, 2016 which granted Claimant's claim for relief and restored Claimant's Temporary Partial Disability benefits from February 17, 2014 to the present and continuing. Claimant, however, returned to work in May 2015.

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On October 11, 2016, Claimant's counsel filed a Fee Petition, requesting the CRB assess an attorney's fee against Employer in the amount of \$5,880 (five thousand eight hundred eighty dollars) for 24.50 hours of work, billed at \$240.00 per hour that was asserted to have been performed by Claimant's counsel in the appeal before the CRB. The fee application asserted that as a result of the successful prosecution of this matter, Claimant was entitled to thirty two biweekly payments of \$1,392.00.

An Order to Show Cause issued on October 12, 2016 which ordered Employer to show cause by Monday, October 24, 2016 why an order awarding an attorney's fee of \$5,880.00 should not be approved and assesses as requested.

On October 31, 2016, Employer filed Employer's Motion to File Opposition to Fee Petition Time Having Expired with Employer's Opposition to Fee Petition attached as Attachment A. Employer explained that it realized on October 31, 2016 that its response had not been filed. This Panel found Employer did not provide an adequate explanation reason for not following the CRB's Order to Show Cause deadline, and did not consider Employer's Attachment.

7 DCMR § 224.2 provides:

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.

The CRB has held claimant's attorneys are required to submit a detailed time itemization as well as explanation of why an attorney fee should be assessed against an employer for work performed in front of the CRB. Claimant's attorneys are also required to submit proof of the benefits secured. *Jones v. University of the District of Columbia*, CRB No. 09-065 (September 9, 2009).

Claimant provided:

He is thereby entitled to 32 bi-weekly payments of \$1,392 (attachment) and while Counsel expended in excess of 56 hours in the hearing matter and 24 hours in the appellate matter, he is entitled to total fees of \$8,914.17 based on the successful benefits received by Claimant.

Attached to the October 11, 2016 Fee Petition were four Earnings Statements with Claimant's name as the payee. Two of these statements indicated DC Housing Authority as the "payor" and two statements do not indicate who has issued the statements. However all four statements show social security, federal income tax and Maryland state income tax deductions, thus the four statements appear to be payroll checks and not wage loss benefits paid by employer pursuant to AHD's COR.

Because of this, we found counsel had not met his burden of submitting proof of the benefits secured as a result of his efforts, therefore the fee application was dismissed without prejudice on November 7, 2016. Claimant's counsel was advised to resubmit his fee application that identified the amount of fee requested for work performed before the CRB, and the basis for the award including a time itemization and *proof of benefits secured*.

On November 14, 2016, Counsel for Claimant filed "Claimant's Revised Fee Petition" wherein Counsel states:

Counsel's Revised Fee Petition seeks the same CRB fee. However, the \$8,914.18 cap amount has been reduced to a maximum of \$5,555.96 based on the 20% statutory pay cap and the medical expenses and 27 bi-weekly payments secured for Claimant.

An Order to Show Cause Re: November 14, 2016 Revised Fee Application issued on December 9, 2016 which stated:

As there is no dispute Employer was ordered to re-instate Claimant's temporary partial disability benefits as of February 17, 2014 and medical benefits as of February 27, 2014, Employer is directed to show cause why it cannot stipulate to the amount secured for Claimant in the amount of \$27,779.83. *Cf Workcuff v. DC Housing Authority*, CRB No. 15-054 (September 23, 2015)

Employer filed its response on December 19, 2016, wherein Employer concluded:

Counsel's contention that the benefits secured for Claimant is \$27,779.83 are [sic] incorrect. The amount of medical expenses owed Claimant for the reinstatement period is amount of TPD benefits owed Claimant is \$21,120.00. Thus, the amount of benefits Claimant is entitled to for the period of reinstatement is \$22,423.80.

Claimant filed a response to Employer's response asserting that the benefits secured for Claimant also now includes one month of late-payment penalties for each 30 days Employer failed to pay Claimant up to one year of benefits, therefore the amount secured for Claimant far exceeds the \$27,779.83 upon which the \$5,555.96 fee is sought. Claimant's Revised Fee Petition was denied again on January 11, 2017 as the CRB determined Claimant still had not met the statutory requirement of establishing *actual benefits secured*.

On January 23, 2017, Counsel for Claimant filed with the CRB Claimant's Motion for Reconsideration of Order Denying Attorney's Fee. Counsel asserts:

. . . within the past few weeks, Employer has seen fit to pay Claimant the actual wage loss benefits that Counsel secured for him. Not only did Employer finally pay Claimant the TPD back pay it owed, but it paid him the statutory late payment penalties it owed him as well. The total wage loss benefit Employer actually paid to Claimant per the attached email Corvel attorney Justin Orison was \$30,283.06 (see Exhibit)

As to the medical benefits, Claimant produced available statements for the causally-related medical expenses he incurred and is willing to stipulate and accept the assertion made by Employer in a December 19, 2016 Response to Order to Show Cause that the total medical benefits Counsel secured for Claimant as a result of the successful prosecution of his claim is \$1,303.80.

Counsel asks that the CRB reconsider the Order in light of the fact that requiring benefits to have been actually paid places Employer in the position where it can defeat the attorney fee provisions by simply delaying payment but especially in light of the fact that Employer has now paid Claimant based on the benefits he has actually secured.

We note counsel has attached to his motion a copy of an email exchange between counsel and Attorney Justin Orrison, who is identified as the Litigation Manager for Corvel Corporation. The most recent email was from Attorney Orrison and addressed to counsel for Claimant with copies to two other Corvel employees. The pertinent information is as follows:

Regarding Ronald Ward, two payments are being issued today by the Program:

- 1) \$22,401.89 for the indemnity owed;
- 2) \$7,851.17 for the penalties owed.

As of the date of this order, no response with regard to the Motion for Reconsideration has been received from Employer. Inasmuch as the Employer's response on December 19, 2016 objected only to the amount of benefits secured and this Panel concludes that the email exchange is sufficient evidence of the actual amount of benefits secured by counsel.

Claimant's counsel spent 24.50 hours in the successful prosecution of this claim. At a rate of \$240.00 an hour, the total is \$5880.00 which is an amount less than 20% of the benefits secured. Thus, it is hereby ordered that, subject to the condition that the total attorney fee awarded and payable for all work performed before AHD and the CRB is limited to and does not exceed twenty percent (20%) of the actual benefits secured as a result of counsel's efforts with respect to the issues arising from AHD No. PBL 12-055, DCP No. 3011026526, an award of a reasonable attorney's fee in the amount of \$5,880.00 is assessed against Employer and is payable directly to Claimant's counsel, Harold L. Levi.

So ordered.