

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-065 (A)

**SHEILA MCCLARY,
Claimant,**

v.

**LOWE ENTERPRISE, INC., and
LIBERTY MUTUAL INSURANCE COMPANY,
Employer/Insurer.**

On Consideration of a January 25, 2017 Application for an Attorney's Fee
AHD No. 14-306, OWC No. 705744

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 FEB 13 AM 10 51

(Issued February 13, 2017)

Krista N. DeSmyter for Claimant
Melissa J. Townsend for Employer/Insurer

Before HEATHER C. LESLIE, LINDA F. JORY, and GENNET PURCELL, *Administrative Appeals Judges.*

HEATHER C. LESLIE for the Compensation Review Board:

ORDER GRANTING AN ATTORNEY FEE AWARD

Following a formal hearing, an administrative law judge ("ALJ") issued a Compensation Order ("CO") ordering Lowe Enterprise, Inc. ("Employer") to make payments for reasonable and necessary medical expenses that are causally related to Claimant's bilateral carpal tunnel syndrome. After considering the parties arguments on Claimant's appeal, the Compensation Review Board ("CRB"), vacated the CO finding that Claimant's wage loss claim was barred due to untimely notice and remanded the matter to the Administrative Hearings Division for further consideration. *McClary v. Lowe Enterprises, Inc.*, CRB No. 15-156 (March 8, 2016).

A Compensation Order on Remand ("COR") was then issued in which the Administrative Law Judge determined Claimant had failed in her burden she provided timely notice that her injury was work related. On appeal, the CRB determined the COR was not supported by substantial evidence in the record and was not in accordance with the law, and remanded the COR with

directions that the ALJ reanalyze whether Employer rebutted the presumption of compensability. *McClary v. Lowe Enterprises, Inc.*, CRB No. 16-065 (September 22, 2016).

On January 25, 2017, counsel for Claimant filed a letter application for an award of attorney fees (“fee application”). In that fee application, Claimant’s counsel indicated that “On December 9, 2016, the Administrative Hearings Division issued a Compensation Order on Remand finding Claimant entitled to temporary total disability benefits from May 6, 2013 to the present and continuing with a credit for wages earned from October 7, 2013 to November 10, 2013.” The fee application also outlined over \$85,313.22 in benefits secured by Claimant through counsel’s representation. The fee application asserts a total of 11.4 hours of work was performed before the CRB by Claimant’s counsel, and requested the CRB approve that attorney fees be assessed against Employer and Insurer in the amount of \$1,002.64.

In response to a show cause order issued on January 27, 2017, Employer’s counsel filed a letter on February 6, 2017, stating “that the Employer and Insurer have no objection to the Fee Application submitted by Claimant attorney on January 25, 2017 in the amount of \$1,002.64 for work performed before the Compensation Review Board.”

CONCLUSION AND ORDER

Subject to the condition that the total attorney’s fee awarded and payable for all work performed before the Office of Workers Compensation and the Office of Hearings and Adjudication’s Administrative Hearings Division 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. 14-306 and OWC No. 705744, an award of a reasonable attorney’s fee in the amount of \$1,002.64 is hereby assessed against Employer and Insurer and is payable directly to Claimant’s counsel, Krista N. DeSmyter.

So ordered.