

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

**VINCENT C. GRAY**  
**MAYOR**



**LISA MARÍA MALLORY**  
**DIRECTOR**

**COMPENSATION REVIEW BOARD**

**CRB No. 12-160(A)**

**KARLA ZELAYA,**  
**Claimant/Putative Dependent of Decedent Roxana Zelaya–Respondent,**

**v.**

**CLEVELAND CONSTRUCTION COMPANY and AMERICAN ZURICH INSURANCE,**  
**Employer/Insurer–Petitioner.**

Upon Consideration of a Fee Application filed by  
Steven R. Kiersh, Esquire and Jonathan S. Zucker, Esquire,  
concerning the appeal of a Compensation Order affirmed on December 10, 2012

Mark T. Krause, Esquire, for the Petitioner  
Steven R. Kiersh, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, HENRY W. MCCOY, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL, for the Compensation Review Board.

**ORDER DENYING A FEE APPLICATION**

This case involves a claim for death benefits by Karla Zelaya (Claimant), which she claimed entitlement under D.C. Code § 32-1509. Claimant sought those benefits following the work related death of her mother, Roxana Zelaya. Claimant's claim was premised upon the argument that, despite being over 18 years old at the time of her mother's death, she was nonetheless entitled to benefits because she comes within the definition of "child" contained in D.C. Code § 32-1501 (5), because she was "substantially dependent upon the deceased employee and incapable of self-support by reason of mental or physical incapacity" at the time of death. While conceding that Claimant was incapable of self-support by reason of mental incapacity, Employer opposed the claim, arguing that Claimant was not substantially dependent upon the decedent and was therefore not entitled to death benefits. Rather, Employer contended that Claimant's support came from Social Security Disability Income (SSDI) benefits and from her grandmother, Blanca Zelaya.

Following a formal hearing before an Administrative Law Judge (ALJ) in the hearings division of the Department of Employment Services (DOES), at which Claimant was represented by counsel, Steven R. Kiersh, a Compensation Order was issued August 31, 2012, granting Claimant's claim. The award was appealed to the CRB by Employer.

No response was filed on behalf of Claimant in opposition to the appeal.

In a Decision and Order issued December 10, 2012, the CRB affirmed the award made in the Compensation Order.

On April 4, 2013, Counsel Kiersh and another attorney, Jonathan S. Zucker, have now submitted an untitled pleading which appears to be a fee application in which counsel aver that they have, either separately or jointly, “Performed Services” totaling 3.2 hours at the CRB level representing Claimant.

Counsels aver further that they are highly experienced trial attorneys, and that Mr. Kiersh has been an adjunct Professor of Trial Practice at Georgetown University Law Center, and a visiting Professor at the Harvard University Trial Advocacy Workshop.

Lastly, they aver that “the fees sought are less that [sic] 20% of the total award.”

In considering the application, we note that, first, there is no indication in the fee application identifying against whom said fee is sought to be assessed.

Second, we note that the Claimant is nowhere named in the application, and is specifically not identified in the Certificate of Service as having been served with a copy of the application.

Third, no hourly rate is specified as being appropriate for either Counsel.

Fourth, although Mr. Kiersh is identified in the Compensation Order as having represented Claimant at the formal hearing, there is no indication concerning what connection Mr. Zucker has to this case.

Fifth, no dollar amount is specified as the amount of the assessment sought to be approved.

Sixth, neither Counsel filed anything on Claimant’s behalf in opposition to the appeal. The matter was decided by the CRB based solely upon the CRB’s consideration of Employer’s arguments and legal authority as contained in its Application for Review, the contents of the Compensation Order, the record of the formal hearing, and the dependency provisions of D.C. Code § 32-1501, *et seq.*

As far as we can determine, although Mr. Kiersh remains counsel of record for Claimant for administrative and procedural purposes, there was no “representation” or advocacy provided to or on behalf of Claimant by either counsel “before the CRB”.

And finally, we point out that 7 DCMR § 224 governs the process for an award of attorneys fees, and sets forth the matters that must be addressed in considering the award of attorneys fees. The application before us contains little or no information which would permit us to assess the application, taking into consideration the factors set forth in 7 DCMR § 224.2 (a) through (e), and does not contain the information required by 7 DCMR § 224.3 (a) through (c).

Accordingly, for these reasons, the fee application is denied.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL  
*Administrative Appeals Judge*

April 23, 2013  
DATE