

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TOYA KASISKA</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 192,781
<b>HUNTER CARE CENTERS, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>NATIONAL UNION FIRE INSURANCE CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Both claimant and the respondent filed an application for review before the Appeals Board requesting review of an Order entered by Administrative Law Judge Bruce E. Moore on February 16, 1996. The Appeals Board heard oral argument by telephone conference on June 20, 1996.

**APPEARANCES**

Claimant appeared by and through her attorney, Mitchell D. Wulfekoetter of Topeka, Kansas. The respondent and its insurance carrier appeared by and through their attorney, James M. McVay of Great Bend, Kansas. There were no other appearances.

**RECORD**

Motion hearing and exhibits admitted therein before Administrative Law Judge Bruce E. Moore dated February 14, 1996.

**ISSUES**

Respondent asked Appeals Board review of the following issue:

- (1) Whether the Administrative Law Judge erred in ordering respondent to pay a medical bill in the amount of \$4,321.70 to Asbury Salina Regional Medical Center for medical treatment provided claimant.

Claimant requested Appeals Board review of the following issues:

- (2) Whether the Administrative Law Judge erred in not awarding penalties against the respondent and in favor of the claimant pursuant to K.S.A. 44-512a.
- (3) Whether the Administrative Law Judge erred when he reduced the attorney fee requested by the claimant from \$795 to \$500 for services performed in connection with her application for penalties.
- (4) Whether additional attorney fees should be ordered by the Appeals Board for services performed by claimant's attorney during this appeal.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs and hearing the arguments of the parties, the Appeals Board finds as follows:

- (1) This is an appeal by both the claimant and the respondent from an Order entered by Administrative Law Judge Bruce E. Moore on claimant's Application for Penalty with Prayer for Attorney Fees. An Order either granting or denying penalties pursuant to K.S.A. 44-512a is a final order and, therefore, is subject to de novo review by the Appeals Board on written request made within ten days from entry of the order. See K.S.A. 44-551, as amended. See also Waln v. Clarkson Constr. Co., 18 Kan App. 2d 729, 861 P.2d 1355 (1993), and Stout v. Stixson Petroleum, 17 Kan. App. 2d 195, 836 P.2d 1185 rev. denied 251 Kan. 942 (1992). Claimant and respondent entered into a compromise settlement of all issues in this case before Special Administrative Law Judge Philip Shafer on May 10, 1995. Included in the settlement transcript was the agreement of respondent to pay all outstanding authorized medical bills related to the treatment of claimant's injuries to the date of settlement. Attached to the settlement hearing transcript and made a part of the settlement was a Work Sheet for Settlements with an attached itemization of medical and hospital expenses incurred in the case as required by K.A.R. 51-3-9. In the hearing held on claimant's Application for Penalty and Prayer of Attorney Fees, claimant offered into evidence a letter written to respondent's attorney dated April 7, 1995, which also had attached an itemized statement of outstanding medical bills that included copies of the actual itemized medical statement. That letter was written for the purpose of confirming the settlement of the case. Included in the letter was the following language: "the agreement is that your client will pay all valid and authorized medical including, but not limited to what I am submitting at this time." Claimant's attorney concluded that letter by requesting respondent to notify him if the contents of the letter did not represent the parties' agreement.

The outstanding medical bill, that is the subject of this case, totaled \$4,321.70 owed to Asbury Salina Regional Medical center for medical treatment claimant received from December 7, 1993 through December 10, 1993. That itemized amount was included both in claimant's attorney's letter to respondent's attorney dated April 7, 1995 and was also attached to the Work Sheet for Settlements. Subsequent to the settlement, respondent refused to pay the medical bill owed to Asbury Salina Regional Medical Center.

On January 4, 1996, after claimant made proper demand as required by K.S.A. 44-512a, claimant filed the Application for Penalty with Prayer for Attorney Fees. The Administrative Law Judge held a hearing in regard to the application on February 14, 1996, and issued the Order that is the subject of this appeal on February 16, 1996. The Administrative Law Judge ordered the disputed bill paid by the respondent and also ordered respondent to pay claimant's attorney's fees for services performed in connection with the filing of the application. The Administrative Law Judge, however, denied claimant's request for penalties as provided for in K.S.A. 44-512a. The Administrative Law Judge found that the Special Administrative Law Judge, in the settlement proceeding, merely approved the settlement and did not order or award previously incurred medical expenses paid. The Administrative Law Judge concluded that penalties can only be assessed under K.S.A. 44-512a, where medical compensation has been awarded and is not paid when due. Additionally, the Administrative Law Judge determined that there was a good-faith dispute as to whether the medical bill in issue was related to the workers compensation claim. Respondent argued that the Administrative Law Judge erred in ordering payment of the disputed medical bill. Respondent's position was that the disputed medical bill was not for medical treatment required to cure the effects of claimant's work-related injury. Claimant, on the other hand, argued that the medical bill was related to the work-related injury and respondent had agreed to pay the medical bill at the time the case was settled. Therefore, claimant contended that the Administrative Law Judge was required to assess penalties pursuant to K.S.A. 44-512a.

The Appeals Board agrees with the Administrative Law Judge's finding that the disputed medical bill was for medical treatment related to claimant's work-connected injury. In this regard, the Appeals Board also agrees with the analysis and reasoning set forth in the Order by the Administrative Law Judge. The Appeals Board finds that the Administrative Law Judge has set out his findings of fact and conclusions of law in some detail concerning this issue. The Appeals Board also finds it is not necessary to repeat those findings and conclusions in this Order and adopts those findings and conclusions as its own as if specifically set forth in this Order to the extent those findings and conclusions relate to this limited issue.

(2) The Administrative Law Judge, however, denied claimant's request for the assessment of penalties against the respondent pursuant to K.S.A. 44-512a for not paying the disputed medical bill when due. The Appeals Board disagrees with the Administrative Law Judge concerning that issue and finds that respondent is subject to the penalty provisions of K.S.A. 44-512a. Respondent, as early as claimant's letter dated April 7, 1995, had in its possession the itemized hospital statement. In that letter, the claimant's attorney requested respondent to immediately notify him if the respondent did not agree to pay the medical bills enclosed. Also, included in the settlement transcript, as an exhibit attached to the Work Sheet for Settlements, was an itemization for medical

expenses which specifically included the disputed \$4,321.70 hospital bill. No objection to the medical bill was made by respondent until after the settlement hearing. At that time, respondent refused to pay the subject medical bill which forced the claimant to file her demand and application for penalties.

The Administrative Law Judge found that the medical bill for the treatment of claimant's injuries was not ordered paid by the Special Administrative Law Judge in the settlement hearing. The Appeals Board finds when a special administrative law judge approves a settlement between parties to a workers compensation claim that approval constitutes an award of compensation.

The Appeals Board finds, based on the facts and circumstances of this case, that the respondent had the responsibility to specifically object to the payment of the subject medical bill at the settlement hearing or such medical bill was made part and partial of the settlement agreement. Accordingly, since no objection was timely made at the settlement hearing in regard to payment of this medical bill, the Appeals Board finds that it was included in the settlement of the case. The Appeals Board, therefore, finds that a penalty of ten percent of the past due medical bill in the amount of \$432.17 should be assessed against the respondent as provided for in K.S.A. 44-512a.

(3) Claimant filed an itemized affidavit and requested at the hearing before the Administrative Law Judge an award of attorney fees pursuant to K.S.A. 44-536(g) for services performed in connection with the application for penalties. K.S.A. 44-536(g) generally provides for payment of reasonable attorney fees for services performed for an employee subsequent to the ultimate disposition of the original claim. The Administrative Law Judge found claimant's attorney was entitled to reasonable attorney fees pursuant to K.S.A. 44-536(g) but reduced claimant's request from \$795 to \$500. Claimant objected and argued that the \$795 request was reasonable and appropriate and should be ordered paid by the respondent. The Appeals Board affirms the Administrative Law Judge's award of \$500 to claimant's attorney for reasonable attorney fees to be paid for by the respondent. The Appeals Board finds that, in this instance, the \$500 attorney fee award is reasonable and appropriate.

(4) Claimant, during oral argument before the Appeals Board, also requested an award of additional attorney fees for services performed in connection with the appeal to the Appeals Board. The Appeals Board finds that such a request should be made by an appropriate motion before the Administrative Law Judge. The Appeals Board does not have jurisdiction to entertain an original request as it is limited to review of acts, findings, awards, decisions, rulings, or modifications of findings or awards before the administrative law judge. See K.S.A. 44-551(b)(1), as amended.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated February 16, 1996, should be,

and is hereby, affirmed in that the respondent is ordered to pay the medical bill in the amount of \$4,321.70 to Asbury-Salina Regional Medical Center and claimant's attorney is awarded reasonable attorney fees in the amount of \$500 to be paid by the respondent. The Order by the Administrative Law Judge is reversed in regard to penalties and the respondent is ordered to pay a penalty pursuant to K.S.A. 44-512a to claimant in the amount of \$432.17. Claimant's request for additional attorney fees for services performed in this appeal is remanded for determination by the Administrative Law Judge as the Appeals Board does not have jurisdiction to entertain the request.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Mitchell D. Wulfekoetter, Topeka, KS
- James M. McVay, Great Bend, KS
- Bruce E. Moore, Administrative Law Judge
- Philip S. Harness, Director