

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

PAUL E. FYE)	
Claimant)	
VS.)	
)	Docket No. 227,904
LANDOLL CORPORATION)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from a July 22, 1999, Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

The ALJ granted a portion of claimant's attorney fees request for services rendered post-award in connection with claimant's application for medical treatment. The ALJ reduced the attorney's fees from the \$125 per hour requested to \$100 per hour. Also, the ALJ reduced the attorney's time from 2.1 hours to 1.5 hours. The specific issues raised by claimant for Appeals Board review are:

1. Whether the ALJ erred by reducing the time spent from the 2.1 hours claimed to 1.5 hours.
2. What is the appropriate hourly rate for attorney's fees?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties settled this claim leaving open future medical treatment. Thereafter, claimant, through his attorney, sought additional medical treatment from respondent. The matter was scheduled for preliminary hearing but, before the hearing, respondent authorized Dr. Arjunan to treat claimant. The only issue that remained was claimant's request for attorney fees.

At the July 21, 1999 Preliminary Hearing, claimant's counsel introduced an Affidavit and itemized time sheet showing a total amount of attorney time spent of 2.1 hours and alleging a reasonable hourly rate of \$125.00. Counsel for respondent stated her only objection was to the 1.3 hours for preparation of the Application for Preliminary Hearing.

Respondent's counsel said this seemed excessive. But, as claimant's counsel pointed out at the hearing, claimant's Exhibit A shows the 1.3 hours was not only for the preparation of the Application for Preliminary Hearing but also included "certification" and "file review." This was the first time entry on the exhibit and there is no other entry for file review. Claimant's counsel explained:

MR. OYLER: Well, there's a file to be reviewed. I don't -- I take my job seriously, and I'm not going to file a frivolous motion. Required reviewing a previous transcript, entailed conferences with my client, review of the file, preparation of the documents. It [the Exhibit] does not include anything in regard to sending the 20-day letter. That is a reasonable charge.

Respondent also argued claimant was not entitled to a fee because it agreed to send claimant back to the doctor before the hearing on claimant's application for medical treatment. We find respondent's argument to be without merit. Claimant's attorney received notification that Dr. Arjunan was being authorized by respondent only the day before the hearing. Furthermore, K.S.A. 44-536(g) allows for claimant's attorney fees to be awarded for services rendered post award. The statute does not differentiate as to whether or not the post award motion goes to hearing.

In applying K.S.A. 44-536(g) the Kansas Court of Appeals held in May v. The University of Kansas that "the attorney work contemplated by the statute must be directed toward securing additional benefits for the claimant."¹ The Board finds that the attorney work performed in this case was directed toward securing "additional benefits." And, it was a benefit to claimant because he obtained the desired benefit - medical treatment. The Court in May distinguished ministerial services from attorney services. There is no basis for finding that the services performed by claimant's counsel were merely ministerial or of no benefit to the claimant.

The ALJ reduced the claimant's time from the 2.1 hours claimed to 1.5 hours. The only explanation in the record is the statement in the Order that "The Court will not grant attorney fees for the production of standardized pleadings by a secretary."

The record does not disclose how much of the 1.3 hours was for "the production of standardized pleadings" versus how much was for file review. It may be that the two cannot be separated entirely as the attorney can neither be expected to, nor should he prepare a pleading from memory. Furthermore, it would be irresponsible for an attorney to delegate such a task to a secretary without his input and review of the document. The Affidavit and counsel's statements to the Court were that the 1.3 hours was professional time he spent working on the case, not his secretary. There is nothing in the record to suggest differently. The Board's review of that time sheet discloses no obvious errors, inconsistencies, or exaggerations. The services rendered appear consistent with the progress of the proceedings and evidence presented, and the time expended for those services likewise

¹ May v. The University of Kansas, 25 Kan. App. 2d 66, 69-70, 957 P.2d 1117 (1998).

appear reasonable. Claimant’s counsel should be compensated for the full 2.1 hours requested.

We next turn to the issue concerning the reasonableness of the hourly rate awarded. This issue was not discussed at the hearing. The \$125 per hour rate claimant’s counsel requested was not objected to by respondent. Nevertheless, the ALJ reduced claimant’s hourly rate from the \$125 requested to a rate of \$100 per hour. The ALJ is an expert when it comes to what is a reasonable and customary fee.² The Appeals Board has previously held both rates to be reasonable.³ The Appeals Board concludes the hourly rate awarded by the ALJ is reasonable.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bryce D. Benedict dated July 22, 1999, should be, and is hereby, modified to award claimant’s attorney fees in the amount of \$210.00 for 2.1 hours at \$100 per hour.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Stanley E. Oyler, Topeka, KS
- Maureen T. Shine, Overland Park, KS
- Bryce D. Benedict, Administrative Law Judge
- Philip S. Harness, Director

² City of Wichita v. B. G. Products, Inc., 252 Kan. 367, Syl. ¶ 2, 845 P.2d 649 (1992).

³ See, e.g., Daniels v. Americold Corp., WCAB Docket No. 189,238 (Sept. 1998); Fife v. The Boeing Company - Wichita, WCAB Docket No. 162,556 (June 1997).