

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
PORT ST. LUCIE DISTRICT OFFICE

Gregory Endy,
Employee/Claimant,

OJCC Case No.: 17-013276KFO

vs.

Accident date: 11/1/2016

Big Red Tomato Packers/TLR of Bonita,
Inc. dba Enterprise HR, Inc./Enterprise HR
II, Inc/Big Red Tomato Packers, LLC/TLR
of Bonita Inc dba Enterprise HR/Enterprise
HR II, Inc./Next Level Administrators,
LLC,
Employer/Carrier/Servicing Agent.

Judge: Keef F. Owens

**EVIDENTIARY ORDER ON VERIFIED MOTION FOR ATTORNEY'S FEES
AND COSTS**

This cause was heard before the undersigned in Port St. Lucie, St. Lucie County, Florida on June 6, 2018, upon the Claimant's "Verified Motion for Attorney's Fees and Costs" filed on March 15, 2018 (Docket Number (DN) 114). The Employer/Carrier filed a response on April 13, 2018 (DN 117). Adam G. Werner, Esq. was present by telephone on behalf of the Claimant.

Gregory D White, Esq. was present on behalf of the Employer/Carrier.

The following documentary items were received into evidence:

Joint Exhibits:

Exhibit #1: The parties agreed, after the claimant's request, that the undersigned may take judicial notice of the entire docket.

Claimant's Exhibits:

Exhibit #1: Verified Motion for Attorney's Fees and Costs filed on March 15, 2018 (DN 114).

Employer/Carrier's Exhibits:

Exhibit #1: Employer/Carrier's Verified Response to Verified Motion for Attorney's Fees and Costs filed on April 13, 2018 (DN 117).

At the hearing, Bram Gechtman, Esq. testified on behalf of the claimant and Matthew Troy, Esq. testified on behalf of the employer/carrier. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the witnesses' testimony and may not refer to each piece of documentary evidence, I have attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings.

The undersigned has jurisdiction of the parties and the subject matter. The stipulations of the parties are adopted and shall become part of the findings of fact herein. The documentary exhibits offered by the parties are admitted into evidence and shall become part of the record.

The verified motion for attorney's fee seeks resolution of the amount of the attorney's fee awarded in the Amended Final Compensation Order entered on January 31, 2018. Accordingly there is no dispute that the claimant's attorney is entitled to an attorney's fee.

Hourly rate

Attorney Bram Gechtman testified that a reasonable hourly rate is between \$300.00 to \$350.00, and he concluded that \$325.00 is reasonable in this matter. Attorney Matthew Troy testified that the reasonable hourly rate in the Port St. Lucie District ranges between \$225.00 to \$300.00. He concluded that the appropriate hourly rate in this matter is \$225.00.

Based upon all of the evidence presented, I find that the reasonable hourly rate in this matter is \$275.00.

Time entries

The claimant's attorney agreed at the time of the final hearing to modify several time entries. First, he acknowledged that the time entry for 10/2/17 for 17.0 hours should read 1.7 hours. Second, he agreed to reduce all time entries of .2 hours for receipt and review to .1 hours. After making these modifications, the total time alleged by the claimant's attorney is 96.5 hours.

The employer/carrier initially asserted that the hours awardable in this matter total 76.3 hours. The employer/carrier then divided this figure in half, arguing the reduction is appropriate due to the claimant's attorney's failure to prevail on all issues.

I reject the arbitrary reduction of the time claimed by fifty percent. The employer/carrier have asserted objections to specific time entries unrelated to the benefits obtained, and in most instances those objections have been sustained. There is insufficient evidence to conclude that it is appropriate to reduce the remaining time by fifty percent for failure to prevail on all issues.

The employer/carrier assert numerous objections to specific time entries on various grounds. The employer/carrier withdrew their objections to the vagueness of time entries related to communication between the claimant's attorney and the claimant. The objections related to the following time entries were sustained (and any objections related to time entries not appearing below are overruled):

11/1/2010	.1	Email sent to OPC
6/2/17	.2	Analysis of file . . . unpaid support owed
6/3/17	.4	Receipt and review of case report of microdiscectomy
6/5/17	.2	Receive and review child support report
6/9/17	.2	Emails from/to OPC regarding appearance by phone for mediation

6/9/17	.4(x2)	Receipt and review of motion to correct parties
6/12/17	.2	Email sent to OPC re NTD of adjuster
6/21/17	.6	Receipt and review of records of Physicians Immediate
6/26/17	.2	Email to/from OPC re: incorrect mailing address
7/11/17	.2	Receipt and review of Notice of Denial of surgery
8/16/17	.4	Receipt and review of signed medical release for VA
8/17/17	.2	Receipt and review mediation conference report
8/17/17	.2	Receipt and review NTD Dr. Zeide
8/21/17	.3	Receipt and review correspondence re: VA release motion
9/6/17	.2	Email to OPC re: NTD Dr. Prasher
9/15/17	.2	Email to OPC re: NTD employer
9/27/17	.2	Email to OPC re: advance
9/27/17	.2	Analysis of file re: motion for advance
9/27/17	.2	Analysis of file re: order on advance
9/28/17	.2	Correspondence from OC re: settlement interest
10/19/17	.2	Receipt and review order granting motion for advance
10/24/17	.2	Email to OPC enclosing NTD Dr. Simon
11/2/17	.4	Receipt and review of motion to compel HIPAA release
12/12/17	.2	Email to OPC re: motion to amend petition
12/12/17	.2	Analysis of file re: motion to amend petition
12/13/17	.3	Receipt and review Virtual Freight Inspector payment list
12/13/17	.2	Email to Atty. Duffy re VFI list

12/14/17	1.0	Analysis of file re: PFB for Dr. Prasher appointment
12/14/17	.8	Review of case
12/14/17	.9	Analysis of file re: motion to amend petition

All objections to time entries entered on or after 1/5/2018 are sustained.

The remaining time awardable to the claimant's attorney after his voluntary correction and withdrawal of time entries at the time of the hearing, the employer/carrier's withdrawal of objections, and the rulings on the employer/carrier's remaining objections is 84.2 hours.

Reasonableness of the attorney's fee

Pursuant to *Castellanos v. Next Door Co.*, 192 So. 3d 431 (Fla. 2016), the undersigned must review the factors outlined in *Lee Engineering & Construction Co. v. Fellows*, 209 So. 2d 454 (Fla. 1968), and determine whether the statutory fee results in an unreasonable fee. The factors include:

(1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause. The amount of time is demonstrated by the time sheets subject to the deductions noted above. The novelty and difficulty of the issues related to the right hip condition and the payment of indemnity benefits were of average complexity, but they were rendered less complex once the EMA was appointed.

(2) Whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other employment while employed in the particular case or antagonisms, with other clients. The loss of opportunity in other cases is equal to the amount of time represented in the time sheets subject

to the deductions noted herein.

(3) The customary charges of the Bar for similar services. The testimony related primarily to the hourly rate awarded to workers' compensation attorneys in general. As noted above, the undersigned finds that the reasonable hourly rate in this matter is \$275.00.

(4) The amount involved in the controversy and the benefits resulting to the client from the services. The exact value of the benefits obtained in this matter is unclear, but appears to be at least \$12,915.40. The benefits obtained include the payment of indemnity benefits, penalties, interest, and compensability of the right hip and low back (which was not contested).

(5) The contingency or the certainty of the compensation. This was a contingent matter, with the claimant's attorney bearing the risk that he would not be paid if he did not prevail.

(6) The character of the employment, whether casual or for an established and constant client. The claimant has been represented by his attorney for approximately one year.

Pursuant to *Castellanos*, and based upon my review of the *Lee Engineering* factors, I find that the statutory attorney's fee would not represent a reasonable fee.

Accordingly, having considered all of the evidence and the above-stated factors, I conclude that a reasonable attorney's fee in this matter is \$23,155.00 (84.2 hours x \$275.00 per hour).

Costs

The claimant's attorney seeks \$1,994.21 in costs. The employer/carrier assert an objection to costs for photocopies, postage, faxes, and "1.5% interest/hard cost." The objection to the \$104.93 in "1.5% interest/hard cost" is sustained. The remaining costs of \$1,889.28 shall be paid by the employer/carrier.

It is **ORDERED and ADJUDGED:**

The employer/carrier shall pay the claimant's attorney an attorney's fee in the amount of \$23,155.00 (84.2 hours x \$275.00 per hour). The employer/carrier shall pay the claimant's attorney's costs in the amount of \$1,889.28.

Done and electronically served on Counsel and Carrier this 11th day of June, 2018, in Port St. Lucie, St. Lucie County, Florida.



Keef F. Owens
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Port St. Lucie District Office
WestPark Professional Center, 544 NW University Blvd., Suite
102
Port St. Lucie, Florida 34986
(772)873-6585
www.fljcc.org

COPIES FURNISHED:

Next Level Administrators, LLC
legal@nextleveladmin.com,lwagner@nextleveladmin.com

Adam G. Werner, Esq.
LSchwab@fortheinjured.com,ETrevino@fortheinjured.com

Gregory D. White, Esquire
GWhite@hrmcw.com,apeters@hrmcw.com