

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS  
JACKSONVILLE DISTRICT OFFICE

Lori M. Wilkinson,	)	
Employee/Claimant,	)	
	)	
vs.	)	
	)	OJCC Case No. 98-016569NPP
Work Impex Trading Corporation, and World	)	
Impex Corporation/Sentry Insurance Company,	)	Accident date: 7/8/1998
Sentry Insurance,	)	
Employer/ Carrier/Servicing Agent.	)	Judge: Neal P. Pitts
_____	)	

ORDER ON AWARD OF CLAIMANT'S ATTORNEY'S FEES AND COSTS

This matter having come on for hearing before the court on the 13<sup>th</sup> day of November, 2009, pursuant to the claimant's Verified Attorney's Fee Petition And Taxable Costs, and the EC's written objections thereto, for attorney's fees and taxable costs associated with obtaining various medical benefits, including attendant care and authorization of orthopedic treatment with Dr. Rogonzinski for the right shoulder condition, reimbursement of the cardiology bills and out of pocket expenses, and the undersigned having reviewed the evidence, having heard argument of counsel, and otherwise being duly advised in the premises, the undersigned decides as follows:

1. At the commencement of the hearing, the undersigned noted that the claimant's attorney, Howard G. Butler, Esq., is entitled to an award of reasonable attorney's

fees and costs pursuant to the Final Order Awarding Attendant Care Benefits (the "Order") rendered on the 8<sup>th</sup> day of July, 2009, only the amounts thereof being in dispute. Jurisdiction having been reserved in such order to determine the amounts thereof if the parties were unable to reach an agreement on same.

2. More specifically, the Order directed the EC to: pay \$1,141.00 to Coastal Health for outstanding invoices regarding prior professional attendant care services rendered; authorize an increase in attendant care benefits from 6 to 12 hours as of May 8, 2008 to the present, payable to the husband at the proper rate; authorize orthopedic treatment with Dr. Rogonzinski for the right shoulder condition; and to reimburse the claimant for cardiology bills and out of pocket expenses.
3. At the hearing, the following evidence was marked and admitted as follows:

**JUDGE'S EXHIBIT:**

1. Final Order Awarding Attendant Care Benefits rendered on the 8<sup>th</sup> day of July, 2009.

**JOINT EXHIBITS:**

1. Deposition of Michael Milone, with attachments, taken on

April 15, 2009.

2. Deposition of Janice Greaves, with attachments, taken on October 30, 2009.

**CLAIMANT'S EXHIBITS:**

1. Verified Attorney's Fee Petition and Taxable Costs.
2. Notice Of Filing in Support of Verified Fee Petition.
3. Coastal Health Services, Inc.
4. Composite including claimant's proposed benefits worksheet.

**EMPLOYER/CARRIER'S EXHIBITS:**

1. Verified Response To Verified Attorney's Fee Petition And Taxable Costs.
  2. Amendment To Verified Attorney's Fee Petition And Taxable Costs.
  3. Composite exhibit reflecting itemization of medical and indemnity benefits paid by the EC on behalf of claimant.
  4. Breakdown of benefits obtained.
4. During the hearing, counsel for both parties testified. In addition to their testimony, counsel stipulated that the range for a reasonable hourly fee customarily charged in Jacksonville for similar services in the area of workers' compensation was between \$200.00 and \$250.00. Counsel disputed, however, the value of the benefits obtained on

behalf of the claimant pursuant to the Order. Counsel presented to the court their respective work sheets reflecting the value of the benefits which they contend were secured, the primary difference being whether the claimant secured an award of future attendant care benefits pursuant to the Order.

5. I deny claimant's assertion that the Order allows her to include in the calculation the value of future attendant care benefits projected out for 5 years from the date of the filing of the petition for benefits seeking same. I make this finding for several reasons.
6. First, the language in the Order itself awarded past due attendant care benefits "up to the present." I construe this to mean through the date of the Order of July 8, 2009. The EC, in its worksheet marked as Exhibit 4, calculated the value of this benefit through July 23, 2009; which date is accepted. The First District Court of Appeals noted in *Southwood Timber Co., v. Hicks*, 959 So. 2d 318 (Fla. 1<sup>st</sup> DCA 2007), that an award of future attendant care benefits could be made **from** the date of the hearing. To do so, however, such future attendant care benefits would have had to be quantifiable in terms of the specific type and amount to be performed in the future. In *Southwood Timber Co.*, an

award of "no more than 20 hours per week and for such time as said attendant care services are necessary and proper," was reversed because it was insufficiently quantifiable. The Order did not do so.

7. Second, the testimony of Dr. Boggs does not substantiate an award of future attendant care benefits that could have been included in the Order. Rather, Dr. Boggs testimony supported an award of 4 months attendant care benefits post op but then he differed to Dr. Garcia and Dr. Roberts on the issue of whether attendant care benefits would be reasonable after that time.
8. Third, the prescription of Dr. Roberts, marked as part of claimant's Exhibit 2, dated August 17, 2009, does not provide competent substantial evidence upon which to predicate an attorney's fee award for future attendant care benefits. This prescription was generated after the merits' hearing that resulted in the Order. Therefore, it could not have been considered by the JCC at the time of the hearing. Based upon the holding in *Southwood Timber Co.*, the language used in the prescription prescribing "attendant care indefinitely for up to 12 hours per day," it is not sufficiently quantifiable to allow for an award of attorney's fees predicated upon the value of future

attendant care based upon this prescription, even assuming that the Order had awarded future benefits.

9. I note that the Order references a prescription written by Dr. Roberts in April, 2009, in which he confirmed the need for 12 hours of attendant care. Apparently, this prescription supported the award of attendant care through the date of the hearing. This prescription is not in evidence for the attorney's fee hearing.
10. I find that the benefits secured on behalf of the claimant in the Order as a result of Mr. Butler's representation to be \$36,730.68. I find that a guideline attorney's fee would be \$4,423.07.
11. I find that a reasonable fee customarily charged in the locality for similar services would be in the range of Two Hundred Dollars (\$200.00) to Two Hundred and Fifty Dollars (\$250.00) per hour.
12. I find that the reasonable hourly rate to be awarded to claimant's counsel for his handling of this claim to be Two Hundred and Fifty Dollars (\$250.00) per hour.
13. Taking into consideration the evidence at the hearing regarding the time spent by claimant's counsel, I find that the reasonable and necessary time spent by claimant's attorney to be 59 hours.

14. I find that the EC put forth a skilled and vigorous defense to the claims being sought by the claimant which required the experience and ability of claimant's counsel to prevail. I find that the fee was contingent and that claimant's counsel would not be paid unless he prevailed.
15. I find that based upon the reasonable number of hours spent by claimant's attorney, an award of a guideline attorney's fee would provide claimant's counsel with an effective hourly rate of \$74.97. I find this hourly rate when compared to the qualifications of claimant's counsel, the contingent nature of the fee arrangement, the skilled and vigorous defense mounted by the EC, coupled with the hourly fee customarily charged for similar services, requires a departure from the guideline attorney's fee to be appropriate and to predicate the award of attorney's fees upon the number of hours reasonably spent securing the benefits. Based upon the reasonable number of hours, coupled with the reasonable hourly rate of \$250.00, it results in a reasonable attorney's fee of Fourteen Thousand Seven Hundred and Fifty Dollars (\$14,750.00), to be paid at the expense of EC.
16. There was no dispute regarding the requested costs of One Thousand Four Hundred-Seventy Two Dollars and eight cents

(\$1,472.08) to be paid by the EC. Therefore, I find that the claimant is entitled to an award against the EC for costs in this amount.

17. Claimant's counsel also asserts entitlement to a reasonable fee to be paid by claimant for securing the 2009 PTD weekly supplemental benefits of \$18.17, pursuant to a petition for benefits filed on March 13, 2009. The claimant was already receiving PTD benefits, but the EC had failed to make the upward adjustment for PT supplemental benefits commencing January, 2009.
18. According to the deposition testimony of Michael Milone, the EC paid these back due benefits on March 31, 2009, with penalties and interest. The gross amount was \$199.00, less the social security offset. After the offset was taken, the claimant was paid \$217.16, which included penalties and interest. A guideline attorney's fee for securing this back due benefit is \$43.43. Because the EC timely paid this benefit, the fee for securing this benefit is not chargeable to the EC.
19. Claimant's counsel asserts entitlement to a guideline attorney's fee payable by the claimant based upon a projected value of 5% calculated over the claimant's life time. I reject that claim. I do so because I do not find

that as a result of his services, he secured a 5% increase in PTD supplemental benefits calculated until age 62. I make this finding because when the claim was filed, the claimant was already receiving PTD benefits, for which claimant had already been paid an attorney's fee by the EC. Such fee would have included the value of the value of the PTD supplemental benefits to age 62. Thus, entitlement to PTD was not obtained by the filing of petition for benefits. Rather, the EC had simply failed to increase the PT supplemental benefits for 2009; an oversight that they corrected within 30 days of the filing of the petition.

20. Under this evidence, it does not follow, therefore, that the claimant's attorney established entitlement to PTD supplemental benefits through the filing of this petition. Rather, he simply secured the underpayment resulting from the EC's failure to timely increase the supplemental benefits in 2009 to which entitlement had already been secured. Therefore, I find that as a result of claimant counsel' efforts, he secured \$217.16, in benefits, which included penalties and interest. A guideline attorney's fee for securing this benefit is \$43.43, which is properly payable by the claimant. Because this is an attorney's fee which is payable by the claimant, I do not find that a

departure from a guideline fee is warranted.

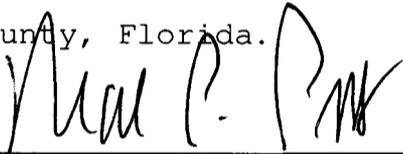
Based upon the foregoing findings of fact, it is therefore

CONSIDERED, ORDERED, and ADJUDGED that:

1. The claimant's Verified Attorney's Fee Petition And Taxable Costs is hereby granted.
2. The employer/carrier shall pay claimant's attorney Howard G. Butler, Esq., at his address of 1506 Prudential Drive, Jacksonville, Florida 32207, the sum of Fourteen Thousand Seven Hundred and Fifty Dollars (\$14,750.00), as a reasonable attorney's fee, together with payment of the sum of One Thousand Four Hundred-Seventy Two Dollars and eight cents (\$1,472.08), for costs.
3. The claimant shall pay claimant's attorney the sum of Forty Three Dollars and forty three cents (\$43.43), as a reasonable attorney's fee for obtaining the back due 2009 PTD supplemental benefits.

DONE AND MAILED this 2nd day of December, 2009, in  
Jacksonville, Duval County, Florida.



  
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Neal P. Pitts  
Judge of Compensation Claims  
Division of Administrative Hearings  
Office of the Judges of Compensation Claims  
Jacksonville District Office  
1809 Art Museum Drive, Suite 200

Jacksonville, Florida 32207-2840  
(904)348-2790  
www.jcc.state.fl.us

Lori M. Wilkinson  
6321 Victoria Park Court  
Jacksonville, Florida 32216

Work Impex Trading Corporation  
2335 North Market Street  
Jacksonville, Florida 32206

Sentry Insurance  
Post Office Box 26363  
Richmond, Virginia 23260

Howard G. Butler, Esq.  
Butler Law Group  
1506 Prudential Drive  
Jacksonville, Florida 32207  
hobutler@bellsouth.net

Gregory D. White, Esquire  
Hurley, Rogner, Miller, Cox, Waranch & Westcott, P.A.  
1560 Orange Avenue Suite 500  
Winter Park, Florida 32789  
DPavone@hrmcw.com ; DDykes@hrmcw.com