

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Mary Hektner,
Employee/Claimant,

OJCC Case No. 13-014654RLD

vs.

Accident date: 4/20/1995

School Board of Brevard County/Sedgwick
CMS,
Employer/Carrier/Service Agent.

Judge: Robert L. Dietz

EVIDENTIARY ORDER ON APPELLATE ATTORNEY'S FEES

THIS CAUSE was heard before the undersigned in Sebastian, Indian River County, Florida on May 23, 2016, on the Motion and Verified Petition for Appellate Attorney's Fees filed on April 18, 2016 (Docket Number (DN) 186). The Employer/Carrier filed a Verified Response to Claimant's Verified Petition for Appellate Attorney's Fees on May 5, 2016 (DN 191). Toni Villaverde, Esq. appeared telephonically on behalf of the Claimant. William H. Rogner, Esq. appeared telephonically on behalf of the Employer/Carrier.

At the hearing, Counsel for the Claimant and the Employer/Carrier provided argument regarding the legal positions raised in their Verified Motion, Verified Response, and attached exhibits. 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:

1. The undersigned has jurisdiction over the parties and subject matter based on the First District Court of Appeal's granting of appellate attorney's fees and costs in their Order

dated April 1, 2016 (DN 180). The appellate case was based on the appeal of the Final Order entered by the undersigned on July 29, 2015 (DN 127).

3. On the issue of the quantum of a reasonable attorney's fee for Claimant's Counsel, I have carefully considered the evidence and the various factors as contained in Section 440.34(1), Florida Statutes (1994) and Lee Engineering & Construction Co. v. Fellows, 209 So.2d 454 (Fla. 1968) as follows:

(a) "The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly."

The Claimant's attorney is requesting 60.8 hours. The Employer/Carrier's Verified Response indicates that 30 - 36.2 hours of attorney time is reasonable. In reviewing the time entries of the Claimant's Verified Petition, I note that a significant amount of the time is related to trial level matters and the amount of the appellate attorney fees, and not the appellate issues in the underlying appeal. Trial level attorney fees will be addressed in a separate proceeding. I have also reviewed the objections of the Employer/Carrier to the Claimant attorney's time and their recommended reductions. I have considered that the appellate time requested is twice that of the Employer/Carrier's time, and that the argument in the Appellee's brief is seven pages citing two cases that relate to pretrials.

Based on the evidence before me, I find that 30 hours is a reasonable time for the provision of appellate legal services in the defense of this Order. There was no novelty related to the issues of this case. Selection and provision of authorized medical treatment is a routine subject of workers' compensation litigation. Determination of whether competent substantial evidence supports the ruling of the judge of compensation claims is a routine subject of workers' compensation appeals. The challenge for the Claimant's attorney in this case is not the legal

issues, but the knowledge and experience of opposing counsel, who is one of the most respected appellate attorneys in the workers' compensation field, and who is Board Certified in Workers' Compensation Law and Appellate Law by The Florida Bar. This is a plus factor.

(b) "The fee customarily charged in the locality for similar legal services."

The Claimant's attorney asserts that the range in the locality is \$350.00 to \$500.00 per hour, and requests \$375.00 per hour based on her experience and qualifications. The Claimant's attorney asserts that this range and requested hourly rate are based on the range in Miami District and that the "locality" should be defined as statewide for appellate attorney fees based on the location of the Claimant's attorney (Miami District), and not the locality of the case (Sebastian District). I reject this argument. While there has historically been little litigation over the fee customarily charged in the locality for similar legal services except in the context of self-serving (for both sides) testimony of those involved in the case or their hand-picked "experts," the appellate courts have recognized that there is a difference in legal markets and have left the determination of reasonable attorney fees to the judges of compensation claims in the various districts around the state. Attorneys may choose the claimants they wish to represent which brings with the decision of representation the jurisdiction of the case. The Claimant's attorney agrees with this as it relates to trial level fees, but attempts, unconvincingly, to argue that a distinction should be made only in appellate cases in workers' compensation. The Employer/Carrier's attorney asserts that the range for appellate attorney fees is \$200.00 to \$375.00 in Sebastian District and that based on the Claimant's attorney's experience and qualifications, the range would be \$225.00 to \$275.00 per hour. The Claimant's attorney is not Board Certified by The Florida Bar in Workers' Compensation Law, so no premium is assigned. I find that an appropriate hourly rate in this case based on the experience and qualifications of

the claimant's attorney is \$250.00 per hour. I accept the Employer/Carrier's attorney's testimony that this hourly rate is in the reasonable range for the locality in Sebastian District.

(c) "The amount involved in the controversy and the benefits resulting to the Claimant."

The value of the medical benefits obtained (authorized medical treatment of two doctors) is uncertain at this time. It is also undetermined whether this award of medical benefits will result in any additional indemnity benefits. This is a neutral factor.

(d) "The time limitation imposed by the claimant or the circumstances."

There were no unreasonable time limitations imposed in this case. This is a neutral factor.

(e) "The experience, reputation, and ability of the lawyer or lawyers performing the services."

Toni Villaverde, Esq. has provided legal services to the Claimant during the course of the litigation. She has experience in workers' compensation litigation and has been admitted to The Florida Bar for more than twenty-five years. This is a plus factor.

(f) "The contingency or certainty of a fee."

This appellate matter was handled on a contingency basis, the contingency being that counsel for the Claimant would be entitled to an appellate attorney's fee if, and only if, the First District Court of Appeal upheld the judge of compensation claims' order. The contingency fee versus the fee certain is a plus consideration in the determination of a reasonable attorney fee.

4. No evidence was presented on the issue of appellate costs, and, as a result, none are awarded.

5. Based on the above findings, and the application of the statute and case law, I find that the Employer/Carrier should pay to the Claimant's attorney a fee based on thirty (30) hours at \$250.00 per hour.

It is **ORDERED and ADJUDGED** that:

The Employer/Carrier shall pay to Toni Villaverde, Esq. an appellate attorney fee in the amount of \$7,500.00. No appellate costs are awarded.

DONE AND ELECTRONICALLY SERVED ON COUNSEL this 23rd day of May, 2016, in Sebastian, Indian River County, Florida.



Robert L. Dietz
Judge of Compensation Claims
Sebastian/Melbourne District Office
1627 US-1, Suite 115
Sebastian, Florida 32958
(772)581-6800

COPIES FURNISHED:

Sedgwick CMS
FLOJCCInbox@sedgwickcms.com

Toni Lynne Villaverde, Esquire
tvillaverde@tlvlegal.com, asaetae@tlvlegal.com

H. A. Rigdon, Jr., Esquire
hrigdon@rigdonalexander.com, jkrzyston@rigdonalexander.com

William H. Rogner, Esquire
wrogner@hrmcw.com, atierney@hrmcw.com