

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

Eunice Capps,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 06-008294DSR
)	
Enterprise Rent A Car,)	Accident date: 5/19/2005
)	
Employer,)	
)	
and)	
)	
Frank Gates Service Company,)	
)	
Carrier/Servicing Agent.)	
_____)	

FINAL ORDER ON AMOUNT OF ATTORNEY FEES AND COSTS

AFTER DUE NOTICE to all parties a Final Hearing was held on the amount of the fee to be paid to the Claimant's attorney at the Employer/Carrier's expense on July 23, 2009, in St. Petersburg, Pinellas County, Florida. The following documentary items were received into evidence:

1. Pretrial Stipulation and Order dated June 9, 2009 (Court's Exhibit #1)
2. Order dated February 23, 2007 (Court's Exhibit #2)
3. Petition and Affidavit for Attorney's Fees and Costs (Claimant's Exhibit #1)
4. Response (Employer/Carrier's Exhibit #1)

At the hearing Patricia R. Fay, Esq. and W. Rogers Turner, Jr., Esq. appeared and testified before me. 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:

On the issue of a quantum of a reasonable attorney's fee for counsel for the Claimant, I have carefully considered the evidence and the various factors contained in Florida Statutes Section 440.34(1), 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 property."

The parties agreed to the Claimant's attorney being paid a fee at the Employer/Carrier's expense based on the hours expended and not limited to a statutory fee. Additionally, the parties agreed that 110 hours was a reasonable amount of time to secure the benefits herein. The parties did not agree as to the usual and customary rate in the area.

This case was handled by attorneys who are well known to the undersigned and who have practiced Worker's Compensation law extensively. The issues involved a claim for permanent total disability which was awarded by the undersigned by Order dated February 23, 2007. That Order was Affirmed by the First District Court of Appeal on March 10, 2008. The Claimant's attorney has asserted that the claim was aggressively defended and noted that the trial took in excess of four hours. The Claimant in this claim was a difficult client and that she had difficulty in reading and writing which necessitated the Claimant's attorney expending additional time and being sure that she understood the litigation.

The Employer/Carrier has asserted that the claim was not novel or difficult and that there were no specific physical limitations in the medical reports which would have assured that this Claimant was found permanently totally disabled. Additionally, the Employer/Carrier asserted that neither of the attorneys had to educate themselves in order to litigate this claim as it was not a specifically novel claim.

I find that while the issues were not novel, that this Claimant was somewhat difficult in light of her limitations. I find that permanent total disability claims do require the skills of an attorney who specializes in Worker's Compensation law.

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

The fee for Claimant's counsel and compensation matters of this nature is normally determined under the guidelines of Florida Statutes §440.34 and is contingent.

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

The parties have agreed that the present value of the permanent total disability benefits awarded was approximately \$95,585.00.

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

I do find this factor to be somewhat significant in light of the fact that the Claimant was not receiving any indemnity benefits subsequent to the date of maximum medical improvement.

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

Counsel for all parties are well known by the undersigned to be experienced attorneys in the area of Worker's Compensation litigation. The Claimant's attorney is not board certified in the area of Worker's Compensation, but has practiced in the area since 1991.

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

1. This matter was handled on a contingency basis, the contingency being that Counsel for the Claimant would only be entitled to a fee if she were to succeed in establishing entitlement to the benefits claimed. The contingency fee versus the fee certain is a plus consideration in the determination of a reasonable fee.

2. The Claimant's attorney testified on her own behalf. The Claimant's attorney testified that the customary hourly rate in this locale is \$250.00 to \$275.00 per hour. The Claimant's attorney could not point the undersigned to any cases in which she had been awarded \$250.00 or \$275.00 by any of the judges in this geographic area. The Claimant's attorney testified that she was awarded a fee in the amount of \$275.00 per hour by the undersigned in the claim of Klyse v. The City of St. Petersburg. The undersigned has reviewed the OJCC file on the Klyse case and can not substantiate that the undersigned actually awarded a contested fee to the Claimant's attorney in that claim at that hourly rate.

3. The Employer/Carrier's attorney testified on his own behalf and initially testified that \$175.00 was a reasonable hourly rate. The Employer/Carrier also could not point the undersigned to any cases in the St. Petersburg District where \$175.00 was awarded. As such, the Employer/Carrier's attorney agreed that based on the three cases he provided to the undersigned that \$200.00 per hour was probably a reasonable rate in this locale.

4. The Employer/Carrier provided to the undersigned three cases from the St. Petersburg district at or near the time of the Final Hearing. Those cases are Mason v. Home Shopping Network and Broadspire, OJCC Case No. 97-019928LLH (December 23, 2004); Curran v. Abbot Laboratories, Inc. and Broadspire, OJCC Case No. 99-000796DSR (March

7, 2006); Munnerlyn v. Agency for Workforce Innovations and Division of Risk Management, OJCC Case No. 03-001830SPT (April 3, 2007). In the two cases where the Claimant's attorney was not a Board Certified Worker's Compensation attorney the hourly rate awarded was \$200.00 per hour. In the one case where the Claimant's attorney was a Board Certified attorney she was awarded \$225.00 per hour. The undersigned has additionally found Two other decisions from the St. Petersburg District during this period: Nadeau v. Michael's Arts and Crafts, OJCC Case No. 06-036768LLH (May 11, 2007); and Zigmund v. Most Holy Name of Jesus School and Unisource Administrators, Inc., OJCC Case No. 02-047146LLH (April 3, 2007). In both of those cases the Claimant's attorney was also awarded \$200.00 per hour as the reasonable hourly rate.

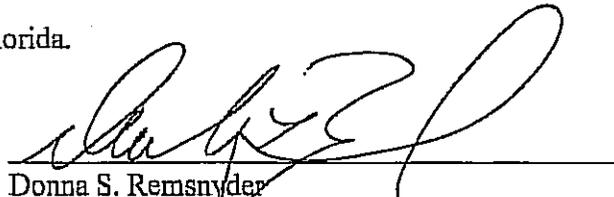
5. As substantiated by the case law cited above, I find that \$200.00 per hour is the usual and customary rate in this locale. Based on the totality of the evidence before me I find that a reasonable hourly rate in the case at bar is \$200.00 per hour. As indicated earlier, the claim was not particularly novel or difficult, but did require the expertise of an attorney who specializes in Worker's Compensation law. I find that the Claimant's attorney is entitled to be a fee based on \$200.00 per hour. The Employer/Carrier shall pay to the Claimant's attorney a fee of \$22,000.00.

6. Turning now to the costs at issue, the Employer/Carrier has agreed to the costs claimed by the Claimant's attorney except for the copying cost of \$277.75, the mileage cost of \$41.00, the FAX cost of \$37.00, and the long distance cost of \$9.26. The undersigned has reviewed the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. A review indicates that the mileage and long distance costs of the attorney are not litigation costs that should be reimbursed. The copying costs may be reimbursable if they were copies of documents

filed with the Court or obtained in discovery. The Claimant's attorney herein has not presented any evidence to substantiate what the copying costs were related to, and as such, they are not reimbursable. Likewise, the Claimant's attorney has failed to substantiate what the Fax costs were related to so that I find that they are not reimbursable either. The other costs are taxable and the Employer/Carrier shall reimburse the Claimant attorney the taxable costs of \$5,419.90.

WHEREFORE, it is hereby ORDERED and ADJUDGED that the Employer/Carrier shall pay to the Claimant's attorney a reasonable fee in the amount of \$22,000.00 and reimburse taxable costs of \$5,419.90.

DONE AND ORDERED in Chambers this 24th day of July, 2009, in St. Petersburg, Pinellas County, Florida.



Donna S. Remsnyder
Judge of Compensation Claims

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Digitally signed by Wanda Hall
Reason: digitally signed and e-mailed
Date: 2009.07.24 12:02:29 -04'00'
District Deputy Clerk to Judge Donna S. Remsnyder