
In the Matter of the Compensation of
HERY ESPINOZA, Claimant
WCB Case No: 12-00665C
ORDER APPROVING CLAIM DISPOSITION AGREEMENT
Schoenfeld & Schoenfeld,
Sather Byerly & Holloway,

Reviewing Panel: Members Biehl and Langer.

On March 26, 2012, the Board received the parties' claim disposition agreement (CDA). Subsequently, the parties' amended CDA was filed. Pursuant to the amended CDA, in consideration of the payment of a stated sum, claimant releases certain rights to future workers' compensation benefits, except medical services, for his compensable injury. We approve the proposed disposition.

The amended summary page provides that the total due claimant is \$29,375 and the total due claimant's attorney is \$5,238.14. The amended summary page explains that the attorney fee consists of a "\$5,625 statutory fee minus a \$386.86 insurer overpayment of attorney award in Order on Reconsideration[.]" The amended summary page further provides that the total consideration is \$35,000.

We have previously held that, where an overpayment apparently has been made pursuant to prior claim processing obligations, the overpayment cannot qualify as "proceeds" of the parties' CDA. *E.g., Lisa D. Henderson*, 56 Van Natta 2005 (2004); *Guy R. Ivy*, 54 Van Natta 142 (2002); *Timothy W. Moore*, 44 Van Natta 2060 (1992). An "out-of-compensation" attorney fee constitutes "compensation." *SAIF v. Gatti*, 72 Or App 106 (1985); *Loren L. Boll*, 58 Van Natta 3115 (2006), recons, 59 Van Natta 56 (2007). Consequently, the attorney fee from this CDA is \$5,238.14 (\$5,625 - \$386.86). Consistent with the aforementioned case precedent, we interpret the consideration for the CDA to be \$34,613.14 (\$29,375 to claimant and \$5,238.14 to claimant's counsel as set forth on the amended summary page).¹

The CDA and addendum, as clarified by this order, are in accordance with the terms and conditions prescribed by the Board. *See* ORS 656.236(1). Accordingly, the parties' amended CDA is approved.

¹ A \$5,238.14 attorney fee does not exceed the maximum attorney fee (absent extraordinary circumstances) under the Board's attorney fee rules for a CDA totaling \$34,613.14. *See* OAR 438-015-0052(1).

If the parties disagree with our interpretation of the amended CDA, they may move for reconsideration by filing a motion for reconsideration within 10 days of the date of mailing of this order. OAR 438-009-0035.

IT IS SO ORDERED.

Entered at Salem, Oregon on May 1, 2012