
In the Matter of the Compensation of
RONALD D. IGOU, JR., Claimant
WCB Case No. 14-00648, 14-00647, 13-03195
ORDER ON RECONSIDERATION
Hansen Malagon, Claimant Attorneys
Radler Bohy et al, Defense Attorneys

Reviewing Panel: Members Curey, Weddell, and Somers.

On May 27, 2015, we reversed that portion of an Administrative Law Judge's (ALJ's) order that had upheld the self-insured employer's denial of claimant's injury claim for a right shoulder/cervical condition. We also awarded a \$12,500 employer-paid attorney fee under ORS 656.386(1) for claimant's counsel's services at the hearing level and on Board review for finally prevailing over the employer's compensability denial. Submitting (for the first time) a time ledger listing his services performed on behalf of his client (at the hearing level, on review, and following our order), claimant's counsel seeks reconsideration of our decision and an increased attorney fee award. Based on the following reasoning, we adhere to our prior determination.

In making his presentation, claimant's counsel offers no explanation why this information could not have been previously submitted to the ALJ or before the issuance of our order pursuant to OAR 438-015-0029. Under such circumstances, we decline to consider this belated submission.¹

In any event, in response to claimant's motion, we withdraw our May 27 order to further consider our attorney fee award. After conducting our reconsideration of the record, we adhere to our previous determination of a reasonable employer-paid attorney fee award for claimant's counsel's services at both the hearing level and on Board review in successfully prevailing over the employer's denial.

¹ Citing *Seth Ramseyer*, 66 Van Natta 1836 (2014), claimant's counsel also asserts that the attorney fee award granted in that case establishes an hourly rate for services generated in prevailing over a carrier's denial. To the contrary, the *Ramseyer* decision neither addresses an hourly rate for an attorney fee nor, for that matter, even quantifies the amount of time expended by the claimant's counsel before the carrier's "pre-hearing" rescission of its denial. Instead, after considering the factors prescribed in OAR 438-015-0010(4), the *Ramseyer* order simply determined a reasonable carrier-paid fee for the claimant's counsel's services at the hearing level in securing the carrier's "pre-hearing" rescission of its denial. Finally, as we have noted in previous decisions, the time expended by a claimant's counsel in successfully overturning a denial is but one factor considered in the determination of a reasonable attorney fee award. See *Anthony Lopez*, 65 Van Natta 1912, *recons*, 65 Van Natta 2065 (2013); *Brenda J. Dillard*, 62 Van Natta 3052 (2010); *Cheryl Mohrbacher*, 50 Van Natta 1826 (1998).

In reaching this conclusion, we have again applied the factors prescribed in OAR 438-015-0010(4). In particular, we have considered the time devoted to the issue (as represented by the hearing record and claimant's appellate briefs), the complexity of the issue, the value of the interest involved, the nature of the proceedings (which includes a 78-page hearing transcript, four testifying witnesses, a 20-page closing argument transcript, a concurrence report from claimant's physician which was generated by claimant's counsel, as well as two depositions), and the risk that claimant's counsel might go uncompensated.

Accordingly, as supplemented, we republish our May 27 order. The parties' 30-day appeal rights shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on June 16, 2015