

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Anthony Pelissier

Opinion No. 26A-11WC

v.

By: Phyllis Phillips, Esq.
Hearing Officer

Hannaford Brothers

For: Anne M. Noonan
Commissioner

State File No. AA-03847

RULING ON CLAIMANT'S PETITION FOR ATTORNEY FEES AND COSTS

The Commissioner previously decided this claim on September 9, 2011. Claimant had presented two issues for determination: first, whether his May 2010 fusion surgery was reasonable, necessary and causally related to his 2009 work injury; and second, whether Defendant's contribution to his group health insurance premium should have been included in his average weekly wage and compensation rate calculation. The Commissioner ruled in Claimant's favor on the first issue, and against him on the second issue.

In accordance with 21 V.S.A. §678(e) and Workers' Compensation Rule 10, Claimant now has submitted his petition for costs totaling \$2,910.60 and attorney fees totaling \$18,203.50.

According to 21 V.S.A. §678(a), when a claimant prevails after formal hearing necessary litigation costs "shall be assessed" against the employer. The commissioner has discretion to award attorney fees to a prevailing claimant as well. *Id.* Where the claimant prevails on some, but not all of the disputed issues, the award of fees and costs typically is tailored to cover only those costs that relate directly to the successful claims, and only those fees that are commensurate with the extent of his or her success. *Lyons v. American Flatbread*, Opinion No. 36A-03WC (October 24, 2003); *Hatin v. Our Lady of Providence*, Opinion No. 21S-03 (October 22, 2003).

From reviewing Claimant's petition, it does not appear that any of the requested costs reasonably can be attributed to the failed health insurance premium issue as opposed to the successful fusion surgery issue. All of the requested costs are allowed, therefore.

As for attorney fees, I conclude that it is both appropriate and within my discretion to reduce Claimant's petition by ten percent, representing that portion of the time expended that is attributable to matters other than the claim upon which he prevailed. The total fee awarded, therefore, is \$16,383.15.

ORDER:

Defendant is hereby **ORDERED** to pay:

1. Costs totaling \$2,910.60; and
2. Attorney fees totaling \$16,383.15.

DATED at Montpelier, Vermont this 28th day of November 2011.

Anne M. Noonan
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.