

Robert Gadwah v. Ethan Allen

(January 11, 2012)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Robert Gadwah

Opinion No. 33A-11WC

v.

By: Phyllis Phillips, Esq.
Hearing Officer

Ethan Allen

For: Anne M. Noonan
Commissioner

State File No. P-09814

RULING ON CLAIMANT'S PETITION FOR COSTS AND ATTORNEY FEES

Having prevailed at formal hearing, *Gadwah v. Ethan Allen*, Opinion No. 33-11WC (October 20, 2011), Claimant now seeks an award of costs and attorney fees pursuant to 21 V.S.A. §678. Defendant objects on various grounds, discussed below.

Attorney Fees for Work by Prior Counsel

Claimant seeks costs totaling \$930.00 and attorney fees totaling \$3,080.50 for work performed by his prior counsel, who provided representation in this claim from June 29, 2007 through March 24, 2009. Defendant asserts that because prior counsel's representation ceased while the claim was still at the informal dispute resolution level, these fees should be disallowed in their entirety.

I disagree. So long as the representation provided at the informal level is related to the issues addressed at formal hearing, a claimant who prevails in the latter forum routinely is awarded costs and attorney fees relating back to the earlier proceedings as well. I see no reason automatically to disqualify a claimant from recovering these fees merely because the work was split between two attorneys rather than provided start-to-finish solely by one.

Attorney Fees for Work Spent by Prior Counsel on Issues Unrelated to Those Addressed at Formal Hearing

Defendant objects to Claimant's request for an award of fees incurred by his prior counsel relating to whether the claim properly could be captioned to reflect a direct action against Defendant's workers' compensation insurance carrier. This issue was resolved in Claimant's favor at the informal level, but apparently abandoned thereafter. It was not raised at the formal hearing.

Having prevailed on this issue at the informal level, Claimant's remedy would have been to seek an award of attorney fees under Workers' Compensation Rule 10.1300. As he did not do so, and as the issue was not litigated to formal hearing, I agree that the charges relating to it, totaling \$414.00 (4.6 hours at \$90.00 per hour) should be disallowed.

Defendant also objects to an award of fees relating to the recommendation by Claimant's counsel that he file a workers' compensation claim in New Hampshire. The correspondence to which Defendant refers, however, also discussed issues relevant to Claimant's Vermont claim. I will not disallow the billing entries related to this correspondence.

"CaseMap"-Related Charges

Defendant objects to two billing entries, totaling 2.4 hours, during which Claimant's prior counsel used "CaseMap," a software tool used to organize knowledge about a case, to manage medical records and other information about Claimant's pending claim. Although Defendant describes these charges as non-recoverable overhead expenses, I am convinced that the entries represent time spent organizing and analyzing information. This is a legitimate and necessary function for any attorney to undertake, no matter by what means. It is fully recoverable, therefore.

Other Unexplained Charges

Defendant objects to the December 10, 2007 billing entry, totaling 3.6 hours, for file review and a telephone conference with Claimant's wife. Although the purpose of this activity was initially unclear, Claimant's prior counsel since has clarified that it was undertaken in anticipation of filing a Notice and Application for Hearing. This charge is recoverable.

Defendant also objects to the July 21, 2008 billing entry, totaling 3.5 hours, during which Claimant's prior counsel undertook e-mail and/or telephone conferences with a doctor and an attorney who were not involved in the claim. Without further explanation from Claimant's prior counsel, I cannot determine if these charges are appropriately recoverable. Although the billing entry reflects other activities as well, again, without further explanation from Claimant's prior counsel, I cannot differentiate between that part of the billing entry that might be allowable and that part that is not. This charge, totaling \$315.00, is therefore disallowed in its entirety.

Fees Associated with Substitution of Counsel

Defendant objects to 1.4 hours of time billed by Claimant's prior counsel related to effectuating the transition from him to Claimant's current counsel and then subsequently withdrawing from the claim.

While it certainly was Claimant's prerogative to change counsel, I agree that Defendant should not be required to bear the transactional expense related to doing so. These charges, totaling \$126.00, are disallowed.

Various Litigation Costs

Claimant's prior counsel paid a total of \$930.00 to Littleton Regional Hospital for Dr. Forrest's reports. Although Dr. Forrest did not testify at formal hearing, his reports were introduced into evidence and were relied on as a basis for deciding the claim in Claimant's favor. These charges are allowable.

Claimant's current counsel paid a total of \$540.00 to Littleton Regional Hospital. The billing entries for these payments correspond by date to two supplemental reports that Dr. Forrest issued. These charges are allowable.

Claimant's current counsel paid a total of \$791.16 to Hummel Consultation Services, apparently in conjunction with a lien search and possible Medicare Set-Aside agreement. These charges are disallowed.

"File Opening Fee" and Copying Charges

Claimant's current counsel now acknowledges that the \$95.00 "file opening fee" for which he initially sought reimbursement was not specific, and therefore he has withdrawn it.

Claimant's counsel has supplemented his original reimbursement request to include \$309.60 in copying charges (1,721 copies at \$0.18 per page) for multiple sets of medical and social security records. I agree that one extra set of such records, either to present to the hearing officer and/or to share with one's client, is reasonable. I therefore will allow reimbursement totaling \$168.48 (936 copies at \$0.18 per page).

Post-Hearing Charges

Defendant objects to billing entries totaling .5 hours for services rendered by Claimant's counsel after the formal hearing concluded and the parties' proposed findings were submitted. One of the entries was for updating Claimant as to case status. Although this occurred after the record closed, I consider it to be part and parcel of the litigation services provided by Claimant's attorney. This charge is allowable. However, without additional clarification I cannot allow the subsequent billing entry. This charge, totaling \$43.50, is disallowed.

Defendant objects to billing entries totaling 2.7 hours for time spent by Claimant's counsel responding to Defendant's Motion to Reconsider. This charge is allowed.

Fees Incurred in Responding to Defendant's Objections to Fee Requests

Last, Defendant objects to 4.3 hours charged by Claimant's prior counsel in responding to the various objections Defendant has raised to his fee petition. So long as such charges are not incurred because of faulty or deficient record-keeping, they are allowable. *Vermont Human Rights Commission v. LaBrie, Inc.*, 164 Vt. 237, 252 (1995). I will allow them here.

Summary

To summarize the above, the attorney fees requested by Claimant's prior counsel are reduced by \$855.00; the total allowed is therefore \$2,225.50. The requested costs, totaling \$930.00, are allowed in their entirety.

The attorney fees requested by Claimant's current counsel are reduced by \$43.50; the total allowed is therefore \$9,149.00. The requested costs are reduced by \$717.68; the total allowed is therefore \$1,723.95.

ORDER:

Based on the foregoing, Defendant is hereby **ORDERED** to pay:

1. To Claimant's prior counsel, Ronald Fox, Esq., costs totaling \$930.00 and attorney fees totaling \$2,225.50; and
2. To Claimant's current counsel, William Skiff, Esq., costs totaling \$1,723.95 and attorney fees totaling \$9,149.00.

DATED at Montpelier, Vermont this 11th day of January 2012.

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.