

LAMBERT DEFIEL, Employee, v. BAUER WELDING & METAL FABRICATION and AMERICAN COMPENSATION INS./RTW, INC., Employer-Insurer/Petitioners.

WORKERS' COMPENSATION COURT OF APPEALS

JUNE 22, 1998

No. *[redacted to remove social security number]*

HEADNOTES

ATTORNEY FEES - RORAFF FEES; ATTORNEY FEES - APPLICATION FOR REVIEW. While this court has authority, under Minn. Stat. § 176.081, subd. 3, to review attorney fees at any time, it would not exercise that option where the employer and insurer failed to object to the petition for fees, failed to timely appeal from the award of fees, and offered no justification or excuse for its lack of diligence.

Application for review of attorney fees is denied.

Determined by Wilson, J., Johnson, J., and Hefte, J.
Settlement Judge: Penny D. Johnson.

OPINION

DEBRA A. WILSON, Judge

The employer and insurer make an application for review of an order awarding Roraff¹ attorney fees in November of 1997, for a case involving an injury date of March 12, 1997. We deny the application.

BACKGROUND

The employee sustained an admitted work-related injury on March 12, 1997, while working for Bauer Welding & Metal Fabrication [the employer]. On August 27, 1997, the employee filed a medical request, seeking a CT scan of the lumbar spine, an EMG of the bilateral lower extremities, and an EEG. The employer and insurer filed a medical response, refusing to pay for the proposed tests on the basis that the injury was a temporary aggravation of a previous condition.

¹ Roraff v. State of Minnesota, 288 N.W.2d 15, 32 W.C.D. 297 (Minn. 1980).

The matter proceeded to an administrative conference at the Department of Labor and Industry on the issue of the employee's entitlement to the EMG and EEG.² In a decision filed on September 25, 1997, Chief Settlement Judge Penny Johnson ordered the employer and insurer to pay for the proposed tests.

The employee's attorney filed a statement of attorney's fees on October 6, 1997, seeking \$225.56 in contingency fees, which had been withheld from temporary partial disability benefits paid to the employee, and \$809.44 in Roraff-type fees for representation of the employee on a medical issue. The employer and insurer did not file an objection to the statement of attorney fees.

On November 3, 1997, Judge Johnson issued an Order Determining Attorney Fees, ordering that the contingency fees and \$809.44 in Roraff fees be paid to the employee's attorney. No appeal was taken from that order. On January 9, 1998, the employer and insurer filed an Application for Review of Attorney Fees, contending that, under the law in effect on the date of the employee's injury, attorney fees are to be based on the contingent formula and the value of the medical services. On January 15, 1998, the employee filed a motion to dismiss the application for review, contending that it was untimely, as it was not filed within thirty days of service of the Judge Johnson's order.

DECISION

The employee contends that Minn. Stat. § 176.421 governs appeals from orders for attorney fees and that the present application is untimely because no appeal was taken within thirty days of service of Judge Johnson's order. We are not convinced that a party may never obtain review of attorney fees more than thirty days after service of an order awarding fees. Minn. Stat. § 176.081, subd. 3, provides that [t]he workers' compensation court of appeals shall have the authority to raise the question of the issue of the attorney fees at any time upon its own motion and shall have continuing jurisdiction over attorney fees. This language clearly gives this court the option to review attorney fees at any time. However, given the employer and insurer's failure to timely object to the petition for attorney fees, to appeal in a timely fashion from the judge's order awarding fees, or to present any justification or excuse for their lack of diligence in this matter, we decline to exercise that option. Applications for review of fees pursuant to Minn. Stat. § 176.081, subd. 3, will be considered on a case-by-case basis. To grant such review under the circumstances present here would adversely affect the finality of fee awards without compelling reason. We therefore deny the application for review.

² The employer had voluntarily agreed to pay for the CT scan.