

JULIE A. FRIEDGES, Employee/Appellant, v. INDEP. SCH. DIST. #719 and AM. COMP. INS. CO./RTW MINN. INC., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
MAY 17, 1999

No. [REDACTED SSN]

HEADNOTES

ATTORNEY FEES - RORAFF FEES; STATUTES CONSTRUED - MINN. STAT. § 176.081, SUBD. 1(a)(1). Roraff fees under the 1995 amendments to Minn. Stat. § 176.081, subd. 1(a), are to be calculated as a percentage of the dollar value of medical expenses as limited by the fee schedule.

ATTORNEY FEES - SUBD. 7. Roraff fees are not subject to partial reimbursement under Minn. Stat. § 176.081, subd. 7.

Affirmed.

Determined by Wilson, J., Wheeler, C.J., and Johnson, J.
Compensation Judge: Gary P. Mesna.

OPINION

DEBRA A. WILSON, Judge

The employee appeals from the compensation judge's decision as to attorney fees.
We affirm.

BACKGROUND

On September 29, 1997, the employee filed a claim petition alleging entitlement to permanent partial disability benefits and medical expenses as a result of an October 24, 1996, injury in the course and scope of her employment with Independent School District #719 - Prior Lake [the employer]. The employer and insurer admitted liability for the injury but denied liability for the claimed benefits, and the matter came on for hearing before a compensation judge on September 16, 1998. In a decision issued on October 7, 1998, the judge awarded the employee impairment compensation for a 7% whole body impairment, payment for treatment rendered by Dr. Paul Lemke, payment for medical mileage, interest, costs, and "subdivision 7 fees." The judge also ordered that attorney fees be withheld from the award of impairment compensation and paid to David Wulff, the employee's attorney, and indicated that "additional fees may be requested if necessary." Neither party appealed from this decision.

On October 22, 1998, Mr. Wulff filed a statement of attorney fees, seeking contingent fees, Roraff fees¹ for recovery of the disputed medical expenses, partial reimbursement of fees pursuant to Minn. Stat. § 176.081, subd. 7, and costs and disbursements. As documented in the statement of fees and explained by Mr. Wulff at the fee hearing held on December 21, 1998, his total request for fees consisted of the following: \$1,306.54 in contingent fees from the employee's permanent partial disability award, and Roraff fees of \$4,054.46 for recovery of disputed medical expenses. The total fee request was calculated to compensate Mr. Wulff at the rate of \$150.00 an hour for his work on the case.

In his Findings and Order issued on January 5, 1999, the compensation judge concluded in part that the contingent fee payable from permanent partial disability benefits was inadequate to compensate Mr. Wulff for his work, that Mr. Wulff's usual hourly billing rate was reasonable, and that the total claimed fee of \$5,365.00 was "[a] reasonable fee for the legal services provided by Attorney Wulff." However, noting that the dollar value of the disputed medical bills recovered by Mr. Wulff, together with mileage, was \$2,704.52, the judge further concluded that "[a]dditional attorney fees for obtaining disputed medical benefits are limited by statute to \$540.90." The compensation judge therefore ordered the employer and insurer to pay \$540.90 to Mr. Wulff as fees for recovery of medical expenses, he made a small award of fees, of \$45.23, pertaining to interest obtained by Mr. Wulff on the benefits previously awarded, and he ordered the employer and insurer to pay Mr. Wulff \$395.17 as reasonable costs. The employee appeals.

STANDARD OF REVIEW

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

Pursuant to Minn. Stat. § 176.081, subd. 1a, as amended in 1995, attorney fees for recovery of medical expense benefits must be calculated according to the same 25/20 formula applicable to contingent fees payable on monetary benefits. If the dollar value of the medical expenses is not ascertainable, the attorney fee for recovery of those expenses "is the amount charged in hourly fees . . . or \$500, whichever is less." Id., subd. 1(a)(2). Recognizing that the 1995 limits on fees may adversely affect the ability of employees to obtain legal representation in medical expense disputes, the compensation judge nevertheless felt constrained to follow the statute. On appeal, the employee argues that the 1995 limits on fees are unconstitutional; that the judge erred in applying the 25/20 formula to the amount payable for medical services under the fee schedule, rather than the amount charged by the provider; and that Minn. Stat. § 176.081, subd. 7, which provides for an additional award "equal to 30 percent of that portion of the attorney's fee

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

which has been awarded pursuant to this section that is in excess of \$250,” applies to both contingent fees and to Roraff fees.

We note initially that we have no authority to decide constitutional issues. See, e.g., Quam v. State, 391 N.W.2d 803, 809, 39 W.C.D. 32, 39-40 (Minn. 1986). The remaining issues, as the employee acknowledges, were considered and resolved by this court in Irwin v. Surdyk’s Liquor, slip op. (W.C.C.A. Dec. 21, 1998),² and Frisch v. S & S Carpet Designs, slip op. (W.C.C.A. Jan. 19, 1999). Specifically, we indicated in those cases that fees on medical expenses are to be calculated based on the amount of medical expenses payable under the fee schedule, not the amount charged by the provider, and that the additional award provided under Minn. Stat. § 176.081, subd. 7, does not apply to attorney fees payable for recovery of medical expenses.³

As the compensation judge’s attorney fee decision is consistent with our recent holdings on identical issues, we affirm his Findings and Order in their entirety.

² Irwin is presently scheduled for oral argument before the Minnesota Supreme Court on June 1, 1999.

³ As for the employee’s additional argument that the compensation judge neglected to award subdivision 7 fees calculated on the contingent fee withheld from the impairment compensation award, we note that the judge did, in his initial October 7, 1998, decision, award “subdivision 7 fees.” Moreover, the employer and insurer assert that this payment has already been made, as indicated in a Notice of Benefit Payment dated October 30, 1998.