

DARRELL P. ENGLISH, Employee/Appellant, v. INDEPENDENT SCH. DIST. #38, RED LAKE, SELF-INSURED/BERKLEY ADM'RS, Employer, and BLUE CROSS/BLUE SHIELD OF MINN., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 14, 2000

No. [REDACTED SSN]

HEADNOTES

APPEALS - RECORD; ATTORNEY FEES - RORAFF FEES. Where the compensation judge provided insufficient explanation for his award of attorney fees pursuant to Roraff v. State of Minn., 288 N.W.2d 15, 32 W.C.D. 297 (Minn. 1980), and where the judge who heard the case and issued the fee award was unavailable to reconsider the matter, and where the record on appeal was inadequate to review the disputed fee award, it was necessary to refer the matter to the Office of Administrative Hearings for a new fee hearing, with directions that a record be created and findings be made concerning the factors delineated in Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 59 W.C.D. 319 (Minn. 1999).

Vacated and referred to OAH.

Determined by Wilson, J., Rykken, J., and Pederson, J.
Compensation Judge: John E. Jansen

OPINION

DEBRA A. WILSON, Judge

The employee's attorney appeals from the compensation judge's award of \$287.68, out of a requested \$7,910.80, in Roraff fees. We vacate and refer the case to the Office of Administrative Hearings for rehearing and additional findings.

BACKGROUND

On November 3, 1997, the employee filed a claim petition, claiming a work-related injury to his eye in December of 1995, while working for the Red Lake School District [the employer], and seeking temporary total disability benefits, permanent partial disability benefits for a 24% whole body impairment, and payment of medical expenses. The self-insured employer answered the claim petition, denying that the employee had sustained a work-related injury, notice, and extent of disability. Blue Cross and Blue Shield of Minnesota [Blue Cross] eventually intervened for medical expenses.

The case proceeded to hearing on July 15, 1999, at which time the employer stipulated that the medical treatment that the employee had received for his right eye was reasonable and necessary. At issue at that hearing was whether the employee had sustained a

work-related injury to his right eye in August or September of 1995, whether that work injury was a substantial contributing factor in the development of the employee's glaucoma, whether the employee had sustained a permanent injury to his right eye, and the extent of the permanent partial disability. In a decision filed on November 4, 1999, the compensation judge found that the employee had sustained a work-related injury to his right eye on or about August 25, 1995, that the injury had substantially contributed to the employee's glaucoma in that eye, that the employee's need for right eye treatment was causally related to the August 1995 injury, that the employee had sustained a 24% whole body impairment referable to his right eye condition, that the employee's attorney was entitled to contingent fees from permanent partial disability benefits, and that the employee's attorney "may be entitled to reasonable attorney fees for representation of the employee in connection with the recovery of the reasonable cost of reasonable and necessary care and treatment" Neither party appealed from this decision.

On December 20, 1999, Mark L. Rodgers, the attorney for the employee, filed a statement of attorney fees, seeking \$3,800 in contingent fees and \$7,910.80 in Roraff¹ or Irwin² fees, based on his recovery of \$18,000 in permanent partial disability benefits and \$1,150.70³ in medical expenses. Mr. Rodgers claimed 73.95 hours of service by himself and his legal assistant. The legal assistant billed at \$80 to \$83 per hour and Mr. Rodgers at \$160 to \$166 per hour. The employer filed an objection to the petition, and the matter proceeded to a telephone hearing on May 26, 2000, before the same judge who had issued the decision on the merits of the employee's claim. The record closed on June 8, 2000, upon receipt of written arguments of counsel.⁴ In findings and order on attorney fees filed on July 7, 2000, the judge found that Mr. Rodgers had recovered \$1,150.70 in medical expenses for Blue Cross and that he was entitled to an additional \$287.68⁵ in Roraff fees for his services in obtaining payment of those expenses. Mr. Rodgers appeals.

STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long

¹ Roraff v. State, Dep't of Transp., 288 N.W.2d 15, 32 W.C.D. 297 (Minn. 1980).

² Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 59 W.C.D. 319 (Minn. 1999).

³ The statement of attorney fees alleged recovery of \$539.27, but the findings on attorney fees reflect that \$1,150.70 was actually recovered.

⁴ The findings and order on attorney fees reflects that "no additional testimony was taken at this hearing on attorney fees."

⁵ Twenty-five percent of the medical expenses recovered.

Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, “[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed.” Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, “unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” Id.

DECISION

Mr. Rodgers contends that the compensation judge erred in failing to analyze the attorney fee claim in light of Irwin and that the matter must be remanded for specific findings. We agree.

Implicit in Finding 7 - - that \$4,087.68 was “reasonable and adequate to compensate Attorney Rodgers for his services in representing the employee in this case” - - is a conclusion that the contingent fee of \$3,800 was not adequate. While the judge awarded an additional \$287.68, over and above the contingent fee, for services in obtaining payment of medical expenses, the judge’s explanation for that award is cursory at best and simply inadequate for purposes of review.

In Frisch v. S & S Carpet Designs, 60 W.C.D. 181 (W.C.C.A. 2000), this court stated that, “[i]n cases involving a request for Roraff fees, the ultimate question is the reasonableness of fees. In making that determination, the compensation judge is required to explicitly analyze the fee request in light of the seven Irwin factors.” Frisch, 60 W.C.D. at 187-88. The seven factors delineated in Irwin are: (1) the amount involved, (2) the time and expense necessary to prepare for trial, (3) the responsibility assumed by counsel, (4) the experience of counsel, (5) the difficulties of the issues, (6) the nature of proof involved, and (7) the results obtained. Irwin, 599 N.W.2d at 142, 59 W.C.D. at 330. In Wesley v. Wiseway Motor Freight, slip op. (W.C.C.A. Nov. 8, 2000), this court held that “specific findings regarding those factors are generally required.” The compensation judge in the instant case made no findings on any of these factors, with the exception of the amount involved. While he noted in his memorandum that Mr. Rodgers’ time records “indicate very little time spent relative to any issues surrounding medical services” and that “it would appear that at [the hourly rate of \$160.00], the number of hours spent on this case is somewhat higher than might have been expected for an experienced attorney,” the judge provided little explanation for why he awarded the sum of \$287.68, as a Roraff fee, in addition to the contingent fee payable from permanent partial disability benefits. In addition, there is no transcript of the arguments made by counsel at the telephone fee hearing.⁶

⁶ A memorandum from the Office of Administrative Hearings to this court, which was part of the judgment role, reflects that this case is an appeal “on an attorney fees by stipulated facts” and that “no transcript was done.” However, there are no stipulated facts, anywhere in the file, and no reference to stipulated facts was made in the findings on attorney fees.

Because we have no record of the hearing to review,⁷ and because we are unable to discern the judge's reasoning in awarding an additional \$287.68 in attorney fees, we vacate the findings and order on attorney fees and refer this matter to the Office of Administrative Hearings for a new hearing on the attorney fee issue, with directions that a record be created and that specific findings be made relating to the Irwin factors.⁸

⁷ We did review the letter briefs referenced in the findings on attorney fees and contained within the file.

⁸ The judge who heard this case the first time has since retired, thus necessitating a new hearing.