MARY JANE MCCARTHY, Employee/Appellant, vs. AL BAKER'S and FARMERS INS. GRP./MID-CENTURY INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 12, 2001

No. [REDACTED SSN]

HEADNOTES

ATTORNEY FEES - IRWIN FEES. The compensation judge erred, as a matter of law, in concluding the attorney fees award was limited to the dollar value of the medical benefits awarded to the employee pursuant to Minn. Stat. § 176.081, subd. 1(a)(1). The matter is remanded for redetermination of a reasonable attorney fee, taking into account the seven factors set forth in Irwin v. Surdyk's Liquor, 599 N.W.2d, 132, 59 W.C.D. 319 (Minn. 1999).

Vacated and remanded.

Determined by: Johnson, J., Pederson, J., and Rykken, J.
Compensation Judge: James R. Otto

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals from the compensation judge's award of attorney fees, asserting the judge improperly determined the amount of fees awardable. We vacate and remand for redetermination in accordance with this opinion.

BACKGROUND

On February 23, 1997, Mary Jane McCarthy, the employee, sustained a work-related injury while employed at Al Baker's, the employer. On April 28, 1998, the employee retained David C. Wulff, Esquire, to represent her. On February 16, 1999, Mr. Wulff filed a Medical Request seeking payment of certain medical expenses incurred by the employee. The matter was ultimately heard before Compensation Judge James R. Otto. In a Findings and Order filed August 20, 1999, the judge ordered the employer and insurer to pay certain medical expenses incurred by the employee, subject to the fee schedule. The employer and insurer appealed the compensation judge's findings to the Workers' Compensation Court of Appeals. Thereafter, the parties settled the case and this court issued an Award on Stipulation on March 7, 2000.

On March 22, 2000, the employee filed a fee petition seeking payment of $11,277.00 in Roraff-type attorney fees. The employer and insurer objected to the request and the case was heard by Judge Otto. In a Findings and Order filed September 21, 2000, the compensation judge found the employee's attorney was entitled to fees for recovery of medical expenses due to

Clark Chiropractic of $2,285.80, future chiropractic services of $2,000.00,[1] a bill of Dr. McPartlin of $168.17 and mileage of $72.50 for a total of $4,526.48. The judge concluded the attorney fee to which Mr. Wulff was entitled was $4,526.48. 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

The employee argues the compensation judge misinterpreted and misapplied Minn. Stat. § 176.081, subd. 1, and Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 59 W.C.D. 319 (Minn. 1999). We are compelled to agree.

In finding 14, the compensation judge stated: "Minn. Stat. § 176.081, subd. 1(a), provides in part, that the amount of attorney fees awarded for obtaining disputed medical benefits under Minn. Stat. § 176.135 **shall be the dollar value of the medical benefits awarded where ascertainable**." (Emphasis in original.) The judge found the disputed medical benefits totaled $4,526.48, and concluded the "maximum statutory fees payable to attorney Mr. Wulff as provided by Minn. Stat. § 176.081 in connection with the recovery of medical benefits . . . is the sum of $4,526.48." (Finding 16.)

Minn. Stat. § 176.081, subd. 1(a), provides for a contingent fee of "25 percent of the first $4,000 of compensation awarded to the employee and 20 percent of the next $60,000 of compensation awarded to the employee" (the 25/20 formula). The statute further states that "[a]ll fees, including fees for obtaining medical or rehabilitation benefits, must be calculated according to the formula under this subdivision." Minn. Stat. § 176.081, subd. 1(a). For the purposes of applying the 25/20 formula in medical expense cases, "the amount of compensation awarded . . . shall be the dollar value of the medical . . . benefit awarded, where ascertainable." Minn. Stat. § 176.081, subd. 1 (a)(1)(2nd ¶). Mr. Wulff obtained recovery of medical benefits of $4,526.48 and medical expenses were the sole issue in dispute. Therefore, under the 25/20 formula, Mr. Wulff would be entitled to a statutory contingent fee of $1,105.29 payable by the employer or insurer.[2]

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[1] In their Stipulation for Settlement, the employer and insurer paid $2,000.00 to the employee to close out future chiropractic expenses.

[2] The compensation judge misread the statute, finding the "amount of *attorney fees* awarded" was limited to the dollar value of the medical benefits awarded. Rather, the statute reads that, for the purposes of applying the 25/20 contingent fee formula, the "*compensation awarded*" is deemed to be the dollar value of the medical benefit awarded. Thus, correctly read, the statute directs application of the 25/20 formula against the amount of medical benefits recovered, resulting in a statutory contingent fee of $1,105.29.

However, in Irwin v. Surdyk's Liquor, id., the supreme court held the absolute statutory limit of a 25/20 contingent fee on the medical benefits awarded was unconstitutional. The court directed that "reasonable [hourly] attorney fees" be calculated, taking into consideration the statutory guidelines, the amount involved, the time and expense necessary to prepare for trial, the responsibility assumed by counsel, the experience of counsel, the difficulties of the issues, the nature of the proof involved, and the results obtained. Id. at 142, 59 W.C.D. at 335-36.

In finding 22, the compensation judge found the "[t]otal reasonable and/or statutory attorney fees in connection with this medical dispute does not exceed and is the sum of $4,526.48." In other findings, the compensation judge found the time shown by Mr. Wulff was excessive (finding 17), the responsibilities assumed by Mr. Wulff had little financial impact on the employee (finding 18), Mr. Wulff has substantial experience in workers' compensation matters (finding 20), and the issues involved in the medical dispute were "somewhat difficult" (finding 21). The employer and insurer argue, therefore, that the compensation judge did consider the seven Irwin factors in arriving at a reasonable attorney fee. This conclusion is supported by substantial evidence, they contend, and must be affirmed on appeal. While there is some merit to this argument, we are not persuaded.

The compensation judge clearly concluded the maximum attorney fee allowed by Minn. Stat. § 176.081, subd. 1(a) is limited to the amount of the medical benefits awarded. This is an incorrect statement of the law. See Scott v. Conagra/Peavy Co., No. [REDACTED SSN] at 4-5 (W.C.C.A. October 18, 2000). We cannot determine from the Findings and Order whether the judge's award of attorney fees was based on the judge's misapplication of the law or a determination of what actually constituted a reasonable fee applying the seven Irwin factors.

We further note the compensation judge found the responsibilities assumed by Mr. Wulff had little financial impact on the employee. (Finding 18.) Financial impact on the employee is not one of the seven Irwin factors. Whether or not the employee might be personally liable for a bill has nothing to do with the amount involved or the results obtained, two of the Irwin factors. The judge does not explain why he considered financial impact on the employee important or what weight he placed on this finding in reaching his decision.

We accordingly vacate the Findings and Order of Judge Otto in its entirety and remand the case to the compensation judge to reconsider the employee's claim for attorney fees in accordance with this opinion.