

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

WORKERS' COMPENSATION COURT OF APPEALS
SEPTEMBER 28, 2001

No. [REDACTED SSN]

HEADNOTES

ATTORNEY FEES - RORAFF FEES. The compensation judge made specific findings regarding the seven Irwin factors, and his award of fees on remand is neither clearly erroneous or so unreasonable as to constitute an abuse of discretion, and must, therefore, be affirmed.

Affirmed.

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 affirm.

BACKGROUND

On February 23, 1997, Mary Jane McCarthy, the employee, sustained a work-related injury while employed at Al Baker's, the employer. In April 1998, the employee retained David C. Wulff, Esquire, to represent her. In February 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 Roraff¹-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

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

expenses due to Clark Chiropractic of \$2,285.80, future chiropractic services of \$2,000.00,² a bill of Dr. McPartlin of \$168.17 and mileage of \$72.50 for a total of \$4,526.48.³ The judge concluded the attorney fee to which Mr. Wulff was entitled was \$4,526.48. The employee appealed the compensation judge's award of attorney fees. In a decision filed March 12, 2001, this court vacated the compensation judge's decision and remanded the case to the judge for redetermination. In a Findings and Order on Remand filed May 15, 2001, the compensation judge awarded attorney fees of \$4,375.00. The employee again appeals.

DECISION

Limitation on Attorney Fees

In his September 21, 2000 Findings and Order, the compensation judge found the maximum Roraff fee to which the employee was entitled was limited to the dollar value of the medical benefits awarded. Accordingly, the compensation judge awarded fees of \$4,526.48. In our March 12, 2001 decision, this court held Minn. Stat. § 176.081, subd. 1(a), does not limit the amount of attorney fees to the dollar value of the medical benefits awarded and remanded the case to the compensation judge for reconsideration.

In his May 15, 2001, Findings and Order, the compensation judge stated in his memorandum

Prior to the Supreme Court Decision of John Irwin v. Surdyk's Liquor and American Compensation Insurance/RTW, Inc., filed September 2, 1999, the Workers' Compensation Court of Appeals in the case of Jacob D. Zimmerman, Jr., v. Moline Machinery, Ltd., and Travelers Insurance Company, File No. [REDACTED SSN], served and filed June 22, 1999 stated on Page 4:

“Minn. Stat. § 176.081, subd. 1(a) permits a fee for legal services of 25 percent of the first \$4,000.00 of compensation **awarded** to the employee and 20 percent of the next \$60,000.00 of compensation **awarded** to the employee.” (emphasis added.) We believe the phrase “compensation awarded” is plain and unambiguous, and **limits the attorney fees to the amount of monetary benefits actually awarded.** (Emphasis in Findings and Order.)

The employee argues the compensation judge again erroneously limited attorney fees to the amount of the medical benefits actually awarded. We are not persuaded.

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

³ The total is actually \$4,526.47.

In our March 12, 2001 decision, this court clearly stated an award of Roraff attorney fees is not limited to the dollar value of the medical benefits awarded to the employee. The court vacated Judge Otto's decision and remanded the case to the judge for reconsideration. Within the context of the remand, the compensation judge's citation of the Zimmerman case is puzzling.⁴ The compensation judge did, however, discuss the statutory guidelines and the seven Irwin factors in reaching his conclusion on attorney fees. The judge's citation of Zimmerman notwithstanding, we are not persuaded the judge again misapplied the law.

Financial Impact on Employee

In his original Findings and Order, the compensation judge found the responsibilities assumed by the employee's attorney had little financial impact on the employee. In our March 12, 2001 decision, this court held financial impact on the employee was not one of the seven Irwin factors and was not a consideration in an award of Roraff fees. In his May 15, 2001, Findings and Order, the compensation judge stated "I accordingly, respectfully disagree that the financial impact on the client is not a factor to be taken into consideration in determining the responsibility assumed by counsel." (Memo at 5.) As the employee correctly points out, this comment by the compensation judge permits an inference the judge disregarded this court's directive and erroneously considered financial impact on the employee in determining attorney fees. There is some merit to the employee's concern. We have, however, carefully reviewed the entirety of the judge's decision and cannot conclude the compensation judge's findings were based on an erroneous application of the law.

Disputed Medical Benefits

In the September 21, 2000 Findings and Order, the compensation judge found the medical services at issue were \$2,285.80 from Clark Chiropractic, future chiropractic services of \$2,000.00, \$168.17 charged by Dr. McPartlin and mileage of \$72.50 for a total of \$4,526.48. In his May 15, 2001 Findings and Order, the compensation judge found there was no genuine dispute on any medical treatment expense other than Dr. Clark's unpaid bill of \$2,825.80.⁵ The employee contends this finding is clearly erroneous and unsupported by substantial evidence. The employee requests a vacation of this finding and a remand to another compensation judge for reconsideration of the employee's claim for attorney fees.

The question of the amount of the disputed medical expenses was not at issue before the compensation judge on remand. We, accordingly, vacate the finding that only Dr. Clark's bill was in dispute. The compensation judge did, however, make an alternative finding which assumed

⁴ In Zimmerman, this court held the compensation judge erroneously awarded Roraff fees by applying the 25/20 formula to the amount billed by the employee's medical providers rather than the amount payable under the Minnesota fee schedule. We further held a contingent attorney fee is payable only on monetary benefits actually awarded in the proceeding. In an unappealed finding, the compensation judge dismissed the employee's permanency claim. Thus, no permanency benefits were awarded in that proceeding from which a contingent fee was payable.

⁵ The amount of Dr. Clark's unpaid bill was \$2,285.80.

the total medical benefits in dispute were \$4,825.80.⁶ The judge then found the application of the 25/20 formula to this sum was an inadequate fee. The judge's treatment of the disputed medical expenses does not, therefore, appear to have been a factor in his ultimate decision.

Amount of Roraff Fees

The compensation judge found, based on Mr. Wulff's substantial experience in workers' compensation matters, that an hourly charge of \$175.00 an hour was reasonable. The judge then found a reasonable attorney fee in the case was \$4,375.00. The employee contends the compensation judge implicitly concluded 25 hours of professional services ($\$4,375.00 \div \175.00) were all that were required to resolve the employee's dispute. This conclusion, the employee contends, is totally unreasonable considering the nature of the dispute, the defenses raised by the employer and insurer, and the time and effort reasonably required to prepare for litigation and resolve a dispute. The employee requests we vacate the decision.

In Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 59 W.C.D. 319 (Minn. 1999), the court held the determination of a reasonable attorney fee in medical disputes is to be based upon the statutory guidelines⁷ together with the seven so-called Irwin factors.⁸ The express purpose of the Irwin decision is to afford a reasonable fee to the employee's attorney. A reasonable attorney fee may not be based solely on a simple mathematical calculation of the time expended times the hourly rate. The time necessary to prepare for trial is but one of the Irwin factors. Rather, a reasonable fee must be determined based on all seven of the Irwin factors.

A determination of the amount of a Roraff fee lies within the discretion of the compensation judge. Neuman v. Graceville Health Ctr., 52 W.C.D. 194 (W.C.C.A. 1994). As each case is factually unique, this court will give deference to the compensation judge's judgment and discretion in determining an award of Roraff fees. In reviewing an award of Roraff attorney fees, this court will not reverse a compensation judge's award or denial of attorney fees absent an abuse of discretion. See Domtar, Inc. v. Niagra Fire Ins. Co., 563 N.W.2d 724 (Minn. 1997); Kuller v. Kuller, 109 N.W.2d 561, 260 Minn. 256 (1961). A compensation judge abuses his or her discretion only when the award of fees is based upon a clearly erroneous conclusion given the record.

The compensation judge made specific findings regarding the Irwin factors. We have carefully reviewed the record, and on balance we cannot conclude an award of \$4,375.00 of attorney fees is so unreasonable as to constitute an abuse of discretion. The judge's award is, therefore, affirmed.

⁶ The actual total amount of the medical expenses awarded was \$4,526.47.

⁷ The 25/20 formula set forth at Minn. Stat. § 176.081, subd. 1.

⁸ In determining a reasonable fee, the compensation judge shall consider the amount involved, the time and expense necessary to prepare for trial, the responsibility assumed by counsel, the expertise of counsel in the workers' compensation field, the difficulty of the issues involved, the nature of the proof needed to be adduced and the results obtained.