

RONALD MOE, Employee/Petitioner, v. DIDD, INC., and W. NAT'L MUT. INS. CO.,
Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
MARCH 14, 2001

No. [REDACTED SSN]

HEADNOTES

ATTORNEY FEES - PETITION TO DISCONTINUE PERMANENT TOTAL DISABILITY BENEFITS. Counsel for the employee is awarded contingent attorney fees for his successful defense of the employee against the employer and insurer's petition, before the Workers' Compensation Court of Appeals, to discontinue permanent total disability benefits.

Petition for contingent attorney fees granted.

Determined by: Johnson, J., Wilson, J., and Rykken, J.

OPINION

THOMAS L. JOHNSON, Judge

Counsel for the employee seeks contingent attorney fees for his successful representation of the employee against a petition to discontinue permanent total disability benefits initiated by the employer and insurer.

BACKGROUND

Ronald Moe, the employee, sustained a personal injury on May 1, 1991, while employed as a truck mechanic by DIDD, Inc., then insured by Western National Mutual Insurance Company. The employee suffered admitted injuries to his right hip and left knee. The employee also experienced low back problems for which the employer and insurer denied primary liability. Following the injury, the employee underwent a total right hip replacement (arthroplasty) on June 26, 1991, and a revision of the arthroplasty on November 18, 1991, as well as extended medical treatment for the knee and low back. In December 1992, the employee was determined eligible for Social Security disability benefits effective November 1991.

On January 11, 1994, the employee filed a claim petition seeking workers' compensation benefits. The parties resolved their differences, entering into a Stipulation for Settlement in August 1994. As part of the settlement, the parties agreed the employee had been permanently and totally disabled since May 1, 1991. The employer and insurer agreed to make a lump sum payment of \$7,500.00 to the employee in full, final and complete settlement of all claims for permanent partial disability to the extent of the dispute, and all claims for under or overpayment of benefits to date. The parties further stated it was their intent to provide for payment of continuing permanent total disability benefits, "for as long as the employee is entitled thereto under

the Workers' Compensation Act." (Stip. VIII, IX.) Mr. Hannig was awarded attorney fees of \$13,000.00. An Award on Stipulation was served and filed on August 26, 1994.

On May 12, 2000, the employer and insurer filed a petition with this court seeking to discontinue permanent total disability benefits to the employee. The employer and insurer contended the employee was no longer totally disabled and was not entitled to continuing permanent total disability benefits. By a decision filed October 10, 2000, a panel of this court denied the petition.

On October 23, 2000, the employee filed with this court a Statement of Attorney Fees seeking contingent attorney fees of \$2,195.00 under Minn. Stat. § 176.081, subd. 1. The employer and insurer filed an objection to the fee request on October 26, 2000; the employee did not object.¹ In his fee statement, Mr. Hannig documented 21.3 hours of time expended in representing the employee on the employer and insurer's petition. Mr. Hannig's hourly rate was \$150.00 which totals legal time of \$3,195.00. In our October 10, 2000 decision, this court awarded Mr. Hannig appellate fees of \$1,000.00. Mr. Hannig initially requested contingent fees of \$2,195.00 and reimbursement of \$646.00 for a vocational evaluation report prepared by Casper Vocational Rehabilitation.² By letter dated November 20, 2000, Mr. Hannig advised the court the employer and insurer agreed to payment of contingent attorney fees of \$1,500.00 with a subdivision 7 reimbursement of \$312.50.

DECISION

Whether an employee's attorney may obtain contingent attorney fees for representing the employee in a petition to discontinue permanent total disability benefits is an issue of first impression. Minn. Stat. § 176.081, subd. 3, provides that this court has the authority to raise the issue of attorney fees at any time and has continuing jurisdiction over attorney fees. The court further notes it "is in furtherance of the public policy of this state that injured employees have access to representation by competent counsel knowledgeable of the intricacies of the workers' compensation law." Kahn v. State, University of Minn., 327 N.W.2d 21, 24, 35 W.C.D. 425, 429 (Minn. 1982).

We have carefully reviewed Mr. Hannig's statement of the time expended representing the employee in this matter which is attached to his statement of attorney's fees. The documented time and expense required to respond to the petition to discontinue permanent total disability benefits is reasonable. The responsibility assumed by Mr. Hannig in this case was significant, as is his expertise in workers' compensation matters. The issue in the case, whether the employee remained permanently and totally disabled, involved complex questions of law and fact. At issue was the employee's entitlement to permanent total disability benefits and Mr. Hannig was successful in averting a discontinuance of those benefits. Based on the foregoing, the court

¹ The file reflects the Statement of Attorney's Fees was served on the employee on October 18, 2000.

² The employee was vocationally evaluated by Jack H. Casper at the request of his attorney and Mr. Casper's report was filed with the court.

concludes a fee of \$1,500.00 payable by the employee is reasonable. The insurer is directed to withhold 20 percent of the employee's future periodic benefits, including supplemental benefits, and pay the same to Mr. Hannig until a total attorney fee of \$1,500.00 has been paid. In addition, the insurer shall reimburse Mr. Hannig the sum of \$646.00 in costs, and shall pay to the employee \$312.50 as reimbursement of attorney fees pursuant to Minn. Stat. § 176.081, subd. 7.