

JAN M. WILMES, Employee, v. WAL-MART STORES, INC. and INS. CO. OF STATE PA./AIG (CLAIMS ADMIN'D BY CLAIMS MGMT., Employer-Insurer/Appellants, and RICE CO. DIST. ONE HOSP. and BACK IN ACTION, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 14, 2001

No. [REDACTED SSN]

HEADNOTES

ATTORNEY FEES - RORAFF FEES. The judge did not err in awarding Roraff fees, as claimed by the employee's attorney, under the circumstances of this case. Nothing in Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 59 W.C.D. 319 (Minn. 1999), indicates that the pertinent factors must be weighed evenly or that assigning little weight to some factors mandates a reduction in fees.

Affirmed.

Determined by Wilson, J., Wheeler, C.J., and Pederson, J.
Compensation Judge: Rolf G. Hagen.

OPINION

DEBRA A. WILSON, Judge

The employer and insurer appeal from the compensation judge's award of \$2,478.78 in Roraff fees.¹ We affirm.

BACKGROUND

The employee first contacted attorney James W. Buckley on November 16, 1999, and Mr. Buckley began work on the employee's case at that time. On February 11, 2000, Mr. Buckley filed a claim petition on behalf of the employee, seeking temporary total disability benefits and medical expenses as a result of a September 20, 1999, work injury. Attached to the claim petition were medical billings from Noran Clinic, Berg's Pharmacy, and District One Hospital. Mr. Buckley also notified the individual providers and Blue Cross/Blue Shield of their right to intervene in the matter.

When no answer to the claim petition was timely filed, on March 10, 2000, Mr. Buckley requested a default hearing. Subsequently, on May 1, 2000, the employer and insurer filed an answer to the claim petition, wherein they admitted the personal injury but denied the claimed average weekly wage, denied that the employee was temporarily totally disabled for the period claimed, and admitted the employee was due the treatment benefits claimed, alleging, however, that all of the reasonable and necessary medical expenses submitted had been paid.

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

On October 2, 2000, the parties filed a stipulation for settlement, wherein the employer and insurer agreed to pay the employee \$1,284.39 to close out temporary total, temporary partial, permanent total, and permanent partial disability benefits to date of award. From that amount, \$321.10 was withheld for contingent attorney fees. The employer and insurer also agreed to pay outstanding medical expenses incurred with Noran Clinic, Berg's Pharmacy, Weiber Physical Therapy, and District One Hospital, along with \$41.38 for out-of-pocket costs and medical mileage. It was agreed, as part of the stipulation, that Roraff attorney fees would be left open. An award on stipulation was filed on October 3, 2000.

On October 2, 2000, Mr. Buckley also filed his statement of attorney fees, alleging a "straight contingency" of \$321.22 and Roraff fees of \$2,478.78. He itemized 14 hours of attorney time at \$200.00 per hour from November 16, 1999, through August 23, 2000.

On September 11, 2000, the employer and insurer filed an objection to the statement of attorney fees,² contending that the amounts claimed were not reasonable. Mr. Buckley filed a revised statement of attorney fees on October 11, 2000, that reflected 15.7 hours of time from November 16, 1999, through September 29, 2000, but indicated that he was still seeking only a total fee of \$2,800.00.

The matter proceeded to telephone hearing on October 30, 2000. In findings and order on attorney fees filed on November 15, 2000, the compensation judge analyzed the fee request using the Irwin³ factors, concluded that \$2,800.00 in total fees was reasonable, and ordered the employer and insurer to pay \$2,478.78 in Roraff fees, over and above the \$321.22 in contingent fees. The employer and insurer appeal.

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 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

² We assume that the attorney fee statement was served on the employer and insurer before it was filed.

³ Irwin v. Surdyk's Liquor, 599 N.W.2d 132, 59 W.C.D. 319 (Minn. 1999).

manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” Id.

DECISION

The employer and insurer contend that the employee’s attorney spent too many hours on this case given the limited issues. While agreeing that Mr. Buckley was not adequately compensated by the contingent fee alone, the employer and insurer contend that five additional hours, at \$200.00 per hour, would have been a reasonable amount of time for Mr. Buckley to have spent on the medical issue. Specifically, the employer and insurer dispute the compensation judge’s analysis of the seven Irwin factors, arguing that the compensation judge assigned “little weight” to each factor that did not support the fee award and that “[t]he fact that there was little or no time and expense necessary to prepare for trial . . . makes a claim for a large amount of time unreasonable.” We are not persuaded.

The compensation judge addressed each of the Irwin factors. He placed moderate weight on the amount involved (\$3,777.57 in medical benefits), great weight on the responsibility assumed by counsel in the early stages of litigation, little weight on the difficulty of the issues, little weight on the nature of proof needed to be adduced, significant weight on the results obtained, significant weight on the attorney’s expertise, and little weight on the time and expense necessary to prepare for trial. Nothing in Irwin says that the factors must be weighed evenly, or that assigning “little weight” to any of the factors mandates a reduced fee. The issue before us is whether the judge’s decision was reasonable based on the record as a whole.

The parties eventually determined that the medical bills were not challenged as to either causation or reasonableness and necessity, and they agreed not to prepare extensively for hearing, with the understanding that the matter would be resolved. However, Mr. Buckley initially worked the case up as if he would have to go to hearing. It was not until the summer of 2000 that he became aware that the only problem with getting the medical bills paid was the use of an incorrect form. At oral argument, the employer and insurer argued that Mr. Buckley should have known at the time of the filing of the answer to the claim petition that there was no issue of causation or reasonableness and necessity with regard to the medical expenses. We note, however, that, although the employer and insurer’s answer admitted causation and arguably reasonableness and necessity, it appears that the outstanding bills were not paid until the settlement was reached.

The employer and insurer’s second argument is that fees in excess of \$1,000.00 should be denied because Mr. Buckley failed to break down his billing into hours expended on the disability issue versus hours expended on the medical issue. Again, we are not persuaded.

Mr. Buckley admitted that one or two entries from July or August of 2000 were related primarily to the issue of temporary disability benefits. As most of the entries during that period were for .1 hours, it would appear that the contingent fee would have fully compensated

him for the time spent exclusively on the temporary disability issue.⁴ Mr. Buckley testified that he was unable to further break down his fee as the issues were otherwise blended in his work. The compensation judge accepted that testimony as truthful. Assessment of a witness's credibility is the unique function of the trier of fact. Even v. Kraft, Inc., 445 N.W.2d 831, 42 W.C.D. 220 (Minn. 1989).

Contrary to the employer and insurer's contention, this court did not hold in Wesley v. Wiseway Motor Freight, No. [REDACTED SSN] (W.C.C.A. Nov. 8, 2000), that an attorney's unwillingness to divide up his time, where feasible, provides grounds for a reduced fee award. Rather, in Wesley, this court affirmed the compensation judge's denial of Roraff fees where the attorney recovered only a small amount in reimbursement to a medical intervenor and failed to prove a permanent injury, thus closing claims for future medical expenses. In that case, the attorney recovered only six weeks of temporary total disability benefits for the employee and \$82.00 in reimbursement to Blue Cross/Blue Shield. The compensation judge found that a contingent fee of \$265.00 was adequate to compensate the attorney for his work. In the instant case, Mr. Buckley recovered substantially more in medical expenses for the employee.

Finally, the employer and insurer contend that, in finding 14 hours reasonable, the compensation judge improperly relied on testimony of Mr. Buckley that he had "unreported hours," over and above those listed on his statements of attorney fees. While the judge referenced that testimony in a finding and in his memorandum, he did not appear to find it determinative as to the Roraff fee claim. Mr. Buckley testified that he did not report time spent on vocational issues, preparation of the attorney fees issue, or some phone calls, but he did document 15.7 hours of work on this case. He asked for payment for 14 hours, and the judge found that 14 hours were reasonable. Because the compensation judge adequately articulated valid reasons for his conclusions, using the Irwin factors, we affirm the judge's findings in their entirety.

⁴ Mr. Buckley was not awarded 14 hours of Roraff fees. Rather, he was awarded \$2,800.00, representing 14 hours of work at \$200 per hour, of which \$321.22 was a contingent fee withheld from disability benefits.