

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

ROBERT BRUCE,)	
)	
Appellant,)	
)	
v.)	C.A. No. N10A-05-013 CLS
)	
CHRYSLER GROUP, LLC,)	
)	
Appellee.)	
)	

ORDER

AND NOW, TO WIT, this 13th day of June, 2012, **IT IS HEREBY ORDERED** as follows:

Before the Court is a motion for attorney’s fees filed by counsel for Robert Bruce (“Appellant”), pursuant to 19 *Del. C.* § 2350(f). According to *Section 2350(f)*, this Court may order the Claimant’s employer and employer’s insurance company to compensate the Claimant’s attorney for *reasonable* attorney’s fees where the Board’s position is affirmed on appeal.¹ The granting or denial of attorney’s fees at the discretion of this Court.² The attorney’s fee is to be paid by the employer and the purpose is to compensate the attorney without depleting the claimant’s award.³

¹ 19 *Del. C.* § 2350(f). (emphasis added).

² 19 *Del. C.* § 2350(f).

³ *Zenith Products Corp., v. Rodriguez*, 2006 WL 1520192, *1 (Del. Super. June 5, 2006).

This motion is properly before the Court at this time. After a hearing to determine workers' compensation, the Industrial Accident Board ("IAB") held that Appellant was not entitled to workers' compensation wage replacement benefits from April 14, 2009 until October 15, 2009. Specifically the IAB concluded that Appellant's retirement was voluntary and was not a result of a knee injury that occurred while working the sub-assembly line for Chrysler Group, LLC ("Appellee"). Appellant appealed to this Court. This Court reversed the IAB on April 27, 2011 holding that: (1) the IAB committed legal error as a matter of law when it found that Appellant voluntarily retired; and (2) the decision of the IAB was not supported by substantial evidence.

On remand, the IAB was directed to calculate the appropriate amount of loss wages pursuant to 19 *Del. C.* § 2324 and §2325 using the Vocational Assessment/Labor Market Survey Report. Appellee appealed this Court's Order dated April 27, 2011. On August 25, 2011, the Supreme Court of Delaware affirmed the decision of this Court reversing the IAB.⁴ Therefore, because this Court's order was affirmed by the Delaware Supreme Court, Claimant's attorney is entitled to reasonable attorney's fees in connection with the appeal.

⁴ *Chrysler Group, LLC v. Bruce*, 27 A.3d 550 (Del. 2011).

In determining a reasonable amount of attorneys' fees under 19 *Del. C.* § 2350(f), the Court will consider the factors set forth in the Code of Professional Responsibility and by the Delaware Supreme Court in *General Motors Corp. v. Cox*.⁵ The following are to be considered by this Court in awarding fees to the claimant's attorney:

- 1) The time and labor required; the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- 3) the fees customarily charged in the locality for similar legal services;
- 4) the amount involved and the results obtained;
- 5) the time limitations imposed by the client or by the circumstances;
- 6) the nature and length of the professional relationship with the client;
- 7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- 8) whether the fee is fixed or contingent.

Additionally, the Court must consider the employer's ability to pay and whether the attorney will receive any fees and expenses from any other source.⁶

Counsel's motion seeks \$34,725.00 for 138.90 hours of work at the rate of \$250.00 per hour. The requested amount is unreasonable. The Court recognizes that counsel is an experienced attorney in the area of workers' compensation and personal injury law and has been a member of the Delaware Bar, in good standing, for 24 years. This Court does not take issue

⁵ 304 A.2d 55 (Del. 1973).

⁶ *Cox*, 304 A.2d at 57.

with the \$250.00 hourly rate because counsel's experience with workers' compensation and IAB cases justifies the fee.⁷ "One reason that attorneys with extensive experience command larger fees than those less experienced is that, through their knowledge and skill, they are able to more effectively and efficiently serve their clients." Also, \$250.00 is within the range of fees customarily charged in workers' compensation cases.⁸ Therefore, \$250.00 per hour is reasonable.⁹

The Court, however, does take issue with the amount of hours requested. Among other hourly breakdowns set forth in the motion, Counsel allocates: (1) 10.5 hours for a stipulation about a brief schedule; (2) 12 hours for the paralegal's preparation of the appendix for the opening brief; (3) 8 hours to review and revise the opening the opening brief; (4) 7.5 hours for a final draft and filing of an opening brief; (5) 6 hours for law clerk research; (6) 1.5 hours to review the Superior Court's decision; (7) 8 hours for a rough draft of an answering brief for the Supreme Court; (8) 6.5 hours to write the

⁷ *Zenith Products Corp.*, 2006 1520192, at *1.

⁸ See *Id.* (holding that although \$275.00 is on the high end of spectrum, it was justified because of counsel's expertise and experience); *Falconi v. Coombs & Coombs, Inc.*, 2006 WL 3393489, *3 (Del. Super. Nov. 21, 2006) (holding that a fee of \$300.00 was reasonable given counsel's expertise in workers' compensation cases for over twenty-five years); *Meadows v. Linton*, 2000 WL 33114379, *1 (Del. Super. Oct. 10, 2000) (holding that rate of \$200.00 per hour was reasonable and was consistent with hourly fees charges by attorneys of similar credentials).

⁹ While \$250.00 is a reasonable fee for the attorney's work, it is not reasonable to bill law clerk and paralegal hours for the same amount.

answering brief; (9) 7.25 hours to finalize and file the answering brief; and (10) 4.5 hours to review the Employer's reply brief.

Some of counsel's fees are duplicative. For example, counsel delegates 6 hours for paralegal preparation of an appendix for an opening brief on two separate days, for a total of 12 billable hours. Counsel did not take into account that the work performed by the paralegal and/or law clerk is not subject to the same hourly rate as the attorney. Also, some of the accumulated hours are excessive. Counsel claims it took 10.5 hours to handle a brief stipulation, 1.5 hours to review the Superior Court decision, 21.75 hours to write and file the answering brief and another 4.5 hours to review the reply brief. Based on the experience and expertise of counsel, the hourly allocations alleged are unsubstantiated.

In applying the *Cox* factors to this case, the Court finds that 138.90 hours of work for this appeal is excessive. This is a workers' compensation case that arose as a result of a knee injury that occurred at Chrysler Group.¹⁰ While the Court acknowledges the amount of time necessary to successfully appeal an IAB case, counsel conceded in his motion that this case was not novel, complex or difficult to prosecute. In addition, counsel admitted that the acceptance of this case did not preclude the handling of other cases.

¹⁰ Counsel had a contingency fee agreement with claimant.

Also, on remand, the IAB held that Appellant was entitled to compensation for: (1) total disability from April 14, 2009 until July 8, 2009 at the rate of \$523.83 per week; (2) partial disability from July 8, 2009 until October 15, 2009 at the rate of \$506.67 per week; (3) \$4,250.00 for attorney's fees; and (4) payment of medical witness fees. The total amount, including the calculation of the total disability, and partial disability equals \$14,557.05.

In addition to considering the *Cox* factors, the Court must consider the employer's ability to pay and whether the attorney will receive income from any other source. Here, the employer, in its response, failed to mention an inability to pay. Therefore, the Court will presume that the employer can pay attorney's fees in connection with this appeal. Additionally, the IAB already awarded \$4,250.00 in attorney's fees.

In *Zenith Products Corp.*, claimant's attorney sought \$275.00 per hour for 61.30 hours of work where the claimant successfully petitioned the IAB for disability and medical bills.¹¹ This Court held that the amount of time sought by the attorney was excessive and instead ordered 30.5 hours to be an appropriate figure.¹² Also, in *Meadows v. Linton*, this Court held that 19.2 hours of work at an hourly rate of \$200.00 was reasonable for fees for an

¹¹ 2006 WL 1520192, at *1.

¹² *Id.* at *2.

IAB appeal.¹³ Similarly, in *Smith v. Delaware Housing Authority*, this Court awarded attorney's fees in the amount of \$125.00 for 47.7 hours of work in connection with an IAB appeal that presented difficult questions.¹⁴

Here, counsel seeks more than double the amount of hours sought in *Zenith Products Corp.* Therefore, like in *Zenith Products Corp.*, the Court must reduce the amount requested. In applying the factors set forth in *Cox* and taking into account the employers ability to pay and the \$4,250.00 already awarded by the IAB, 50 hours is an appropriate figure. Accordingly, Counsel is entitled to 50 hours of work at \$250.00 per hour, for a total amount of \$12,500.00 in attorney's fees.

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

Original: Prothonotary's Office
cc: Michael B. Galbraith, Esq.
Natalie Palladino, Esq.

¹³ 2000 WL 33114379, *1 (Del. Super. Oct. 10, 2000).

¹⁴ 2006 WL 1148764, *1 (Del. Super. Feb. 14, 2006).