

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

ARTHUR WATERS, :
 : C.A. No. 04A-03-001 WLW
 Claimant-Appellant, :
 :
 v. :
 :
 STATEWIDE MAINTENANCE, :
 :
 Employer-Appellee. :

Submitted: May 24, 2006
Decided: August 11, 2006

ORDER

Upon Appellant's Motion for Attorneys' Fees.
Granted in part; Denied in part.

Walt F. Schmittinger, Esquire of Schmittinger and Rodriguez, P.A., Dover,
Delaware; attorneys for Claimant-Appellant.

R. Stokes Nolte, Esquire of Nolte & Associates, Wilmington, Delaware; attorneys
for Employer-Appellee.

WITHAM, R.J.

Claimant-below, Appellant, Arthur Waters (“Mr. Waters”), filed an application seeking attorney’s fees based on his successful appeal before this Court. Mr. Waters is requesting fees in the amount of \$8,920.00, which consists of 29.6 hours at an hourly rate of \$150.00, 9.0 hours at a rate of \$250.00 per hour, and 2.4 hours at a rate of \$300.00. In addition, Mr. Waters asked this Court to apply a one-third contingency multiplier. Employer-below, Appellee, Statewide Maintenance (“Statewide”), is challenging Mr. Waters application, but only as it relates to the contingency multiplier. Statewide argues that the issues on appeal were not novel or complex, nor was the result achieved great. Statewide observes that based on the Industrial Accident Board’s award of attorney’s fees in the amount of \$3,832.52, even without the multiplier, the uncontested fees awarded as a result of the appeal will exceed the amount of additional benefits obtained for Mr. Waters on appeal.

For the reasons set forth below, Mr. Waters’ Application for Attorney’s Fees is *granted* in part and *denied* in part.

Discussion

19 *Del. C.* §2350(f) provides for attorney’s fees when “the claimant’s position in the hearing before the Board is affirmed on appeal.” In the case *sub judice*, this Court affirmed the decision of the Board with respect to its finding that Mr. Waters was no longer totally disabled, but reversed the Board’s decision as to Mr. Waters’ status as a *prima facie* displaced worker because it was not supported by substantial evidence. The case was then remanded to the Board for a decision consistent with that opinion. Based on the successful appeal, Statewide notes that Mr. Waters

received an additional \$7,780.00 in benefits. Accordingly, he is entitled to attorney's fees pursuant to Section 2350(f), which Statewide does not contest. Statewide does, however, challenge the contingency multiplier.

Mr. Waters cites *Quality Car Wash v. Cox*¹ for support of this Court's use of the contingency multiplier. However, the facts of this case are clearly distinguishable from those of *Quality Car Wash*. In *Quality Car Wash*, the Court noted that the multiplier is not routinely applied; however, the Court determined that the fee was contingent on success, the issues were novel and difficult and, as a result, the outcome was doubtful. Additionally, the claimant was young and had suffered major permanent injuries, so the amount of benefits was likely to be great. In the case *sub judice*, the issues on appeal, whether Mr. Waters was totally disabled or a displaced worker, were neither novel or complex. Moreover, the additional benefit obtained by Mr. Waters was only \$7,780.00, which does not rise to the level of "very great," as mentioned in *Quality Car Wash*.

Statewide cites *Vincent v. Gordy's Lumber Mill*,² where the Court opined, "[a] one-third contingency multiplier 'is not to be granted routinely, it is justified where the fee was contingent on success, the outcome was doubtful, and the issues were novel and difficult. . . .'" The Court held that because the issues on appeal were not particularly novel or complex, the request for the one-third multiplier should be

¹1983 WL 476625 (Del. Super.)

²2004 WL 2050427, at *3 (Del. Super).

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denied.³ Based on my determination that the issues presented on appeal were neither novel or complex, I find *Vincent* to be on-point and, therefore, will not apply the contingency multiplier. I will, however, award \$7,410.00 based on the hours and hourly rates set forth in Mr. Waters' Application for Attorney's Fees and in the Certificate of Attorney provided by Mr. Schmittinger, as that amount is uncontested.

Based on the foregoing, Mr. Waters' Application for Attorney's fees is *granted* in part and *denied* in part.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

R.J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

³*Id.*