

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

ZENITH PRODUCTS CORP.,)
)
 Employer Below/)
 Appellant,)
)
v.) C.A. No. 05A-09-005-PLA
)
EDWIN RODRIGUEZ,)
)
 Claimant Below/)
 Appellee.)

Submitted: May 2, 2006
Decided: June 5, 2006

UPON CLAIMANT'S MOTION FOR ATTORNEY'S FEES

J.R. Julian, Esquire, Wilmington, Delaware, Attorney for Zenith Products, Corp.

Gary S. Nitsche, Esquire, Wilmington, Delaware, Attorney for Edwin Rodriguez.

ABLEMAN, JUDGE

Before the Court is a Motion for Attorney's Fees pursuant to 19 *Del.C.* § 2350(f), filed by counsel for Edwin Rodriguez ("Claimant").

Section 2350(f) provides that where a worker's compensation claimant successfully appeals a position taken before the Industrial Accident Board ("Board"), a reasonable attorney's fee may be allowed for the time spent on the appeal. This fee, if allowed, is taxed in the costs against the employer. This statute permits claimants' attorneys to be paid for successfully resisting the appeal of the Board's decision without depleting the claimants' award.¹ Employer Zenith did not file opposition to the motion.

Claimant successfully petitioned the Board for disability benefits and medical bills. That decision was affirmed by this Court on March 3, 2006.² After considering the record of the appeal and the evidence presented in this matter, I find an award of counsel fees is appropriate. In determining a reasonable amount of such fees, the factors set forth in the Code of Professional Responsibility and in *General Motors Corp. v. Cox*,³ serve as a guide. These factors include:

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)

¹ *Aetna Casualty & Surety Co. v. Rodriguez*, 399 A.2d 1289 (Del. 1979); *State v. Pepper*, 1988 WL 90546 (Del. Super.).

² *Zenith Products Corp. v. Rodriguez*, 2006 WL 532062 (Del. Super.).

³ 304 A.2d 55 (Del. 1973).

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.

Claimant's application for fees seeks \$275.00 per hour for 61.30 hours of work. The Court notes that counsel for Claimant is an experienced attorney, and has been a member of the bar of this State for seventeen years. Although the Court finds that \$275.00 per hour is on the high end of the compensation spectrum for legal services of this nature in this locality, the Court believes that counsel's experience in dealing with Industrial Accident Board matters justifies the fee. 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. Counsel clearly fits within the category of an experienced attorney.

As a result, upon reviewing employee-appellant's attorney's invoice, the Court believes that the 61.30 hours of work for which Claimant's attorney seeks compensation is excessive. For example, counsel claims that it took him one hour to read the opinion rendered in this appeal. The Court, on reviewing the twelve-page, size fourteen font, double-spaced opinion, finds that twenty minutes should have been more than

sufficient time. Indeed, it took the Court a mere seven minutes to read the opinion, carefully reading every word. The Court additionally finds it extraordinary that counsel billed 15.5 hours on November 22 for revising the brief and researching cases, when counsel had already spent 14 hours on November 18 and 19 researching the brief and writing a first draft. The briefs for both sides consisted largely of a restatement of the facts from the record below, and included no novel, complex, or particularly difficult issues.

Accordingly, the Court finds that 30.5 hours is a reasonable amount of time to be expended by an attorney with the degree of experience of Claimant's counsel. Based on the foregoing, Claimant is awarded \$275.00 per hour for attorney time of 30.5 hours for a total of \$8,387.50 in counsel fees.

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary
cc: J.R. Julian, Esquire
Gary S. Nitsche, Esquire