

VERMONT DEPARTMENT OF LABOR & INDUSTRY

<i>Wallace</i> Downs)	File No.: A-07522
)	
)	By: J. Stephen Monahan
v.)	General Counsel
)	
Weyerhaeuser)	For: Barbara G. Ripley
)	Commissioner
)	
)	Opinion No.: 6-93WC

APPEARANCES

Geoff Crawford, for the claimant
William O'Rourke, for the defendant

ISSUES

Is an award of attorney fees to a prevailing claimant pursuant to workers' compensation rule 10(b) and 21 V.S.A. § 678(a), based on indemnity and medical expenses awarded, or is it limited solely to the indemnity benefits awarded?

THE CLAIM

Claimant seeks an award of attorney fees based on 20% of \$7,524.31 (medical + indemnity - last best offer) amounting to \$1504.86.

Defendant seeks to limit the award to 20% of the indemnity less one-half the last best offer which would result in a fee award of \$509.00.

FINDINGS

The parties have stipulated to the following:

1. The claimant prevailed in a contested workers' compensation claim before the Commissioner.
2. Indemnity benefits in the amount of \$4,098.79, and medical expenses in the amount of \$4,625.52 were awarded the claimant.
3. The defendant's last best offer was \$1,200.00.

CONCLUSIONS

1. The department awarded claimant attorneys fees "in the amount of 20% of the award above the last, best offer of Defendant, not to exceed \$3000.00."

2. Workers' Compensation Rule 10(b), adopted to implement 21 V.S.A. § 678(a), provides:

Awards of attorney's fees against a party in a contested case under 21 V.S.A. § 678 shall not exceed the amounts permitted by lien under part (a) of this Rule. . . .

3. Workers' Compensation Rule 10(a)(2) provides:

. . . a contingency fee to cover all legal services not to exceed 20% of the compensation awarded, or \$3000.00, whichever is less.


4. The department interprets these provisions to mean that the contingency award is based on 20% of the total amount awarded, i.e., on the amount of indemnity compensation and medical expenses awarded. Payment of medical bills and the provision of medical treatment are often extremely important, contested issues in workers' compensation proceedings, and in many instances the value of such services may far exceed the indemnity compensation at issue. Fundamental fairness requires their inclusion when determining the amount of any fee award. Any concern that this might lead to unreasonably high awards is without basis, because of the \$3000.00 cap on any contingency award.

ORDER

Therefore based on the foregoing findings and conclusions, Defendant is **ORDERED**:

To pay claimant's attorney fees in the amount of \$1,504.86, the claimant having prevailed in the contested hearing in this matter.

Dated at Montpelier, Vermont this 23 day of June, 1993.



Barbara G. Ripley
Commissioner