

Debra Morrisseau v. Hannaford Brothers

(August 9, 2012)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Debra Morrisseau

Opinion No. 21A-12WC

v.

By: Phyllis Phillips, Esq.
Hearing Officer

Hannaford Brothers

For: Anne M. Noonan
Commissioner

State File No. BB-00676

**RULING ON CLAIMANT'S PETITION FOR COSTS AND ATTORNEY FEES
RELATED TO SETTLEMENT OF CLAIMED PSYCHOLOGICAL INJURY**

Claimant seeks an award of costs and attorney fees incurred in reaching a pre-hearing settlement with Defendant regarding coverage for psychological treatment allegedly necessitated by her compensable physical injury.

When a claimant prevails at formal hearing, Vermont's workers' compensation statute, 21 V.S.A. §678(a), has long provided for an award of costs and attorney fees as follows:

Necessary costs of proceedings under this chapter shall be assessed by the commissioner against the employer or its workers' compensation carrier when the claimant prevails. The commissioner may allow the claimant to recover reasonable attorney fees when the claimant prevails. Costs shall not be taxed or allowed either party except as provided in this section.

The commissioner has discretion to award costs and fees in claims that are resolved short of formal hearing as well. As to attorney fees specifically, 21 V.S.A. §678(d) provides:

In cases for which a formal hearing is requested and the case is resolved prior to formal hearing, the commissioner may award reasonable attorney fees if the claimant retained an attorney in response to an actual or effective denial of a claim and thereafter payments were made to the claimant as a result of the attorney's efforts.

As to both costs and attorney fees, Workers' Compensation Rule 10.1300 provides further guidance:

Awards to prevailing claimants are discretionary. In most instances awards will only be considered in proceedings involving formal hearing resolution procedures. In limited instances an award may be made in a proceeding not requiring a formal hearing where the claimant is able to demonstrate that:

- 10.1310 the employer or insurance carrier is responsible for undue delay in adjusting the claim, or
- 10.1320 that the claim was denied without reasonable basis, or
- 10.1330 that the employer or insurance carrier engaged in misconduct or neglect, and
- 10.1340 that legal representation to resolve the issues was necessary, and
- 10.1350 the representation provided was reasonable, and
- 10.1360 that neither the claimant nor the claimant's attorney has been responsible for any unreasonable delay in resolving the issues.

There is no evidence here that Defendant was responsible for undue delay in adjusting Claimant's psychological injury claim, that it denied the claim without reasonable basis or that it engaged in misconduct or neglect. On that basis alone, I conclude that Claimant has not proven her entitlement to an award of either costs or attorney fees.

Claimant would have me base an award of costs and fees solely on the fact that she retained an attorney to represent her, one whose efforts I agree likely contributed to the successful resolution of her psychological injury. To base an award on that criterion alone, however, would render fee awards in informal dispute resolution proceedings the norm rather than the exception. I do not consider that to be the intent of either §678(d) or Workers' Compensation Rule 13. *See, e.g., Yustin v. State of Vermont, Department of Public Safety*, Opinion No. 08-12WC (March 20, 2012). Rather, the discretion granted to the commissioner should be exercised only when the statutory requirements are met. *Id; Zahirovic v. Super Thin Saws, Inc.*, Opinion No. 38-11WC (November 17, 2011). This is not one of those circumstances.

Claimant's Petition for Costs and Attorney Fees is hereby **DENIED**.

DATED at Montpelier, Vermont this 9th day of August 2012.

Anne M. Noonan
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.