

**STATE OF VERMONT
DEPARTMENT OF LABOR**

James Hoyt

Opinion No. 09-15WC

v.

By: Phyllis Phillips, Esq.
Hearing Officer

Chittenden South Supervisory Union

For: Anne M. Noonan
Commissioner

State File No. EE-59582

**RULING ON CLAIMANT’S PETITION FOR AWARD OF COSTS AND ATTORNEY
FEES**

Claimant seeks an award of costs and attorney fees incurred in “pursuing payment of medical bills” at the informal dispute resolution level.

By way of background, Claimant allegedly suffered a work-related injury on December 10, 2012. Defendant denied the claim, initially because Claimant had failed to execute a medical authorization, and later because of discrepancies in the medical records regarding the mechanism of injury. Later still, in December 2013 Defendant agreed to accept the claim without prejudice.

In the meantime, Claimant had submitted various medical bills relating to treatment for his work injury to his group health insurer, which Defendant now agreed to pay. The process for accomplishing this is somewhat complicated, however. It requires each provider to resubmit new bills, with the appropriate supporting documentation, to Defendant for processing and payment in accordance with Vermont’s workers’ compensation medical fee schedule.¹

Defendant also agreed to reimburse Claimant for any co-payments he had made, but again, this could not occur until it received the necessary documentation (including relevant medical records establishing that the treatment provided was causally related to the accepted work injury) from each provider.

The record reflects that Defendant issued full payment to one provider, The Rehab Gym, on December 29, 2014. Claimant acknowledges that Defendant also paid two other providers, Associates in Orthopedic Surgery and Fletcher Allen Health Care, but the record does not reflect when that occurred.² Presumably, at some point Defendant also issued reimbursement to Claimant for his co-payments, but again, the record does not reflect when this occurred.

¹ To avoid being paid twice for the same services, the provider also would be required to reimburse the group health insurer for any amounts the latter already had paid. Presumably this would not occur until after the workers’ compensation carrier has issued payment.

² Claimant asserted in his Petition that medical bills indicating payment to these providers were attached, but in fact they were not.

Between January 7, 2014 and January 8, 2015 Claimant's attorney billed a total of 4.4 hours corresponding with both Defendant's attorney and the Department regarding the status of Defendant's promised payments. On January 21, 2015 he billed an additional 2.1 hours for preparing the petition now pending before me. For the total amount billed, 6.5 hours, he now seeks an award of attorney fees totaling \$942.50.

Discussion:

The Commissioner has discretion to award costs and attorney fees in claims that are resolved short of formal hearing. As amended in 2008, the statute, 21 V.S.A. §678(d), now 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.

Workers' Compensation Rule 10.1300, which was amended in 2010 to incorporate the provisions of §678(d), provides further guidance, as follows:

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, or
- 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.
- 10.1370 Attorney fees may also be awarded in cases not involving formal hearing when the claimant is able to demonstrate that:
 - 10.1371 a formal hearing has been requested; and
 - 10.1372 the case is resolved prior to formal hearing; and

10.1373 the claimant retained an attorney in response to an actual or effective denial of a claim; and

10.1374 thereafter, payments were made to the claimant as a result of the attorney's efforts.

Notably, even as amended, both §678(d) and Rule 10.1300 acknowledge that while the Commissioner retains the authority to award fees when a claim is resolved informally, she is by no means compelled to do so in every case. As was the case prior to the amendments, an award of fees at the informal level remains the exception, not the rule. No such award should be made unless it furthers the goals of (a) maintaining appropriate standards of employer and adjuster conduct; (b) discouraging excessive and unnecessary attorney involvement; and (c) encouraging the parties to make effective use of the informal dispute resolution process.

Claimant here relies on Rule 10.1370 as the basis for his request for an award of fees. But for his "persistent efforts," he asserts, Defendant would not have paid his medical bills, and instead would have allowed his group health insurer to retain the financial burden related to treating his work injury. Aside from the mere fact of the delay between the time when Defendant agreed to accept Claimant's claim and the time when it actually issued payment, I can find no evidence to support this assertion. Given both the inherently time-consuming nature of the medical bill audit and payment process and the inflammatory nature of Claimant's accusation, I cannot accept it as substantiated.

I conclude that Claimant has failed to satisfy the requirements of §678(d) and Workers' Compensation Rule 10.1300. For that reason, I decline to make an award of attorney fees.

ORDER:

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

DATED at Montpelier, Vermont this 28th day of April 2015.

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.