

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Laurie Bevins

Opinion No. 07-25WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Barry Callebaut NA Holdings, Inc.

For: Michael A. Harrington
Commissioner

State File No. PP-59650

ORDER ENFORCING LIEN FOR ATTORNEY FEES

BACKGROUND:

On August 27, 2021, Claimant engaged Kissane Associates to represent her in a workers' compensation claim for injuries related to her employment with Defendant. Claimant and the law firm entered into a written fee agreement for a contingent fee of one-third of the gross amount received for any additional past due temporary disability benefits and one-third of any permanent disability benefits. Attorney Shane Clark provided legal services to Claimant under the agreement.

Sometime thereafter, Claimant was assessed with an eight percent whole person impairment related to her spine injury by occupational medicine physician Verne Backus, MD. Dr. Backus' impairment rating forms the basis for payment of 44 weeks of permanent partial disability benefits.¹ Claimant is currently receiving such benefits on a weekly basis.

On April 7, 2025, Attorney Clark filed a request for lien acknowledgement, and the Department acknowledged his lien on May 14, 2025, pursuant to Workers' Compensation Rule 20.1900.

Also on April 7, 2025, Attorney Clark submitted a request to enforce his lien in the amount of one-third of Claimant's permanent partial disability benefits, to be paid from the tail end of her permanency award; specifically, he seeks lien enforcement against the last 14 weeks of Claimant's benefits.² Attorney Clark's request for lien enforcement included an itemized statement documenting 96.75 hours spent on this claim between August 30, 2021 and April 1, 2025, and his work on the claim continues.

Defendant has expressed a willingness to pay the last 14 weeks of benefits over to Claimant's counsel, provided the Department confirms that it may do so. In the absence of such confirmation, Defendant is concerned that remitting more than 20 percent of the permanent partial disability benefits to Claimant's counsel would not comport with Workers' Compensation Rule 20.1920.

¹ 550 weeks x 8 percent = 44 weeks. *See* Workers' Compensation Rule 10.1500.

² One-third of Claimant's permanent partial disability benefits is 14.7 weeks (44 weeks x 0.333 = 14.7 weeks).

ANALYSIS:

Statutory Provision for Lien Enforcement

The Vermont Workers' Compensation Act provides as follows:

. . . [C]laims of attorneys for services rendered an employee in prosecuting a claim under the provisions of this chapter shall be approved by the Commissioner. When so approved they may be enforced against compensation awards in such manner as the Commissioner may direct.

21 V.S.A. § 682.

Workers' Compensation Rules Relevant to Lien Enforcement

Workers' Compensation Rule 20 sets out the process for acknowledgement and enforcement of attorney liens. Once a lien is acknowledged under Workers' Compensation Rule 20.1900, the employer or insurance carrier must reserve 20 percent of any permanent disability and/or lump sum retroactive temporary disability compensation owed to the injured worker for the purpose of satisfying the lien. *See* Workers' Compensation Rule 20.1920.

In this case, the Department has acknowledged Claimant's counsel's lien, and Defendant has reserved 20 percent of the permanent partial disability benefits to satisfy the lien.

Calculation of the Lien

Workers' Compensation Rule 20.1800 limits the amount that the Department may approve for enforcement of an attorney lien. The rule provides in part:

The lien amount must be calculated in accordance with the provisions of Rules 20.1310 and/or 20.1320 above, and if based on a contingent fee agreement, shall not be excessive when considered against the factors listed in Rule 1.5 of the Vermont Supreme Court Rules of Professional Conduct.

Rule 20.1310 governs the calculation of liens based on an hourly rate, and Rule 20.1320 governs lien calculations based on a contingent fee. As the instant lien enforcement request is based on a contingent fee, the calculation is governed by Rule 20.1320. Rule 20.1320 provides: "If based on a contingent fee, the award *shall not exceed 20 percent* of the compensation or benefits awarded (emphasis added)."

The language of both rules is mandatory. Rule 20.1800 provides that the lien amount for a contingent fee "must" be calculated in accordance with Rule 20.1320. In turn, Rule 20.1320 provides that the lien "shall not" exceed 20 percent. Accordingly, the rules do not permit approval of a lien enforcement request based on a contingent fee in an amount greater than 20 percent of the benefits awarded.

I therefore decline to approve Claimant's counsel's request to enforce his attorney lien in the amount of one-third of his client's permanent partial disability benefits. The most I can approve under Workers' Compensation Rules 20.1800 and 20.1320 is 20 percent.

To be clear, the 20 percent limit does not prohibit an attorney from collecting a one-third contingent fee. Rather, the 20 percent limit applies to the orders that the *Commissioner* may make for attorney fee awards and lien awards. Attorneys may collect the remainder of their one-third contingent fees, provided the fees are reasonable, by making other arrangements. *See* Workers' Compensation Rule 20.1330 (the 20 percent limit applies only to awards made by the Commissioner; it does not prohibit an attorney and client from agreeing to a different contingent fee as between themselves).

Other arrangements for collecting the remainder of a fee include accepting payment directly from the client. In the alternative, if the client consents, Defendant may send the remainder of the fee directly to Claimant's counsel.

Additional Requirement for Lien Enforcement of a Contingent Fee

As set forth above, Workers' Compensation Rule 20.1800 requires that a contingent fee not be excessive when considered against the factors listed in Vermont Rule of Professional Conduct 1.5, which prohibits a lawyer from charging an unreasonable fee. That Rule identifies eight factors relevant to a fee's reasonableness, including the time and labor required, the novelty and difficulty of the questions involved, the skill required to perform the service properly, the fee customarily charged in the locality for similar legal services, the results obtained, and other such considerations.

Having reviewed Claimant's counsel's itemized statement here and having considered the factors set forth in Vermont Rule of Professional Conduct 1.5, I conclude that counsel's fee is not excessive. In fact, it appears that his fee is modest given the significant hours already expended on this claim and the additional hours that he is likely to spend in the future.

Mechanics of Lien Enforcement

Finally, Worker's Compensation Rule 20.2110 provides that, if enforcement of the lien is approved, the Commissioner shall direct the employer or insurance carrier to deduct the amount approved and advance it to the claimant's attorney against (a) the end of any permanent disability compensation due; (b) any lump sum payment of retroactive temporary disability benefits and/or (c) any lump sum compromise settlement.

ORDER OF APPROVAL:

Based on the foregoing, I approve enforcement of Kissane Associates' lien in the amount of 20 percent of Claimant's permanent partial disability benefits. Accordingly,

Defendant is ORDERED to advance the last 8.8 weeks³ of Claimant's permanent partial disability benefits to her attorneys, Kissane Associates, in a lump sum.

DATED at Montpelier, Vermont this 23 day of May 2025.

Michael A. Harrington
Commissioner

³ Claimant is receiving 44 weeks of permanent partial disability benefits. 44 weeks x 20 percent = 8.8 weeks.