

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Oscar Johnson

Opinion No. 11F-25WC

v.

By: Beth A. DeBernardi  
Administrative Law Judge

Hospitality Restaurant Group

For: Kendal M. Smith  
Interim Commissioner

State File No. WW-60645

**RULING ON CLAIMANT'S PETITION FOR ATTORNEY FEES**

**APPEARANCES:**

Nicholas J. Seldon, Esq., for Claimant  
Peter R. Cruice, Esq., for Defendant

On June 13, 2025, Claimant's counsel filed a petition seeking an award of attorney fees for successfully obtaining an interim order. Defendant filed a response on July 14, 2025, and Claimant's counsel replied on July 16, 2025.

**BACKGROUND:**

Claimant alleges that he sustained injuries at work on March 21, 2025, while retrieving a 20-pound box of canned tomatoes from the top shelf of Defendant's cooler. Claimant lost his grip on the box, causing it to fall onto his left upper extremity. He further alleges that he hit his head on a metal door as he fell, and his medical records document a "goose egg" on the back of his scalp. Defendant's video camera recorded some of the accident, although the camera angle did not allow for the capture of Claimant's head allegedly hitting the metal door.

Claimant sought medical treatment at Rutland Regional Medical Center the next day and on March 27. He also saw his treating provider, Dr. Gammons, on April 7 and May 7. At the May 7 visit, Dr. Gammons wrote that there was a causal connection between Claimant's medical symptoms and the work accident. Claimant's medical providers took him out of work as of the accident date.<sup>1</sup>

Claimant retained counsel to handle his workers' compensation claim on April 4, 2025. On April 11, 2025, Defendant denied Claimant's entire claim for benefits. On April 29, 2025, Claimant's counsel filed a Notice and Application for Hearing (Form 6).

The Department's Specialist held an informal conference on June 10, 2025, and found the claim denial not to be reasonably supported. Accordingly, on June 13, 2025, she issued an interim

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<sup>1</sup> Claimant returned to work for a different employer sometime prior to June 10, 2025.

order for all benefits to which Claimant was entitled, including temporary indemnity benefits and medical benefits for his injuries.

Having successfully obtained an interim order at the informal level, Claimant's counsel filed this timely petition for attorney fees on June 13, 2025.

## **DISCUSSION:**

### Statutory Requirements

The Vermont Workers' Compensation Act provides that a claimant is eligible for consideration of an attorney fee award when he or she "prevails" at either the formal or the informal level. 21 V.S.A. § 678(b)(2). Section 678(b)(3) of the statute further provides:

In cases for which a formal hearing is requested and the case is resolved prior to a formal hearing:

- (A) the Commissioner may award reasonable attorney's fees if the claimant retained an attorney in response to an actual or effective denial of a claim and payments were made to the claimant as a result of the attorney's efforts;

The first statutory requirement above is requesting a formal hearing. Defendant here contends that Claimant is ineligible for a fee award because he did not request a hearing. However, Claimant filed the Department's Form 6 on April 29, 2025. Form 6 is a party's "Notice and Application for Hearing." By filing Form 6, Claimant requested a hearing and satisfied the first statutory requirement for a fee award.

The second requirement is retaining an attorney in response to an actual or effective denial of a claim. Defendant contends that Claimant is ineligible for a fee award because he retained an attorney on April 4, 2025, which was seven days prior to the claim denial. Retaining an attorney prior to claim denial does not disqualify a claimant from consideration of a fee award, however. Rather, under such circumstances, the Department limits any fee award to time spent by the attorney after the claim denial date. *See Williams v. State of Vermont*, Opinion No. 03-19WC (February 25, 2019), citing *Combs v. Broe's Masonry*, Opinion No. 27-15WC (November 20, 2015) ("The statutory trigger for an award of fees at the informal level is that the attorney's involvement occurs 'in response to an actual or effective denial of a claim.' I thus must exclude from consideration the fees incurred prior to . . . the date when Defendant first denied Claimant's claim.")

The third requirement is that payments must have been made to a claimant as a result of his or her attorney's efforts. Defendant here does not dispute that payments were made to Claimant as a result of his attorney's efforts, and I find that they were. Accordingly, Claimant has met all three statutory requirements for consideration of an attorney fee award.

Exercise of Discretion

Workers' Compensation Rule 20.1500 provides that, when considering a fee request in cases resolved short of formal hearing, "the Commissioner shall also consider whether an award of fees will further the goals of (a) maintaining appropriate standards of employer and adjuster conduct; (b) discouraging excessive delay or unnecessarily adversarial conduct; and/or (c) encouraging the parties to make effective use of the informal dispute resolution process." Notably, the Rule does not require the Commissioner to make a specific finding with regard to these goals, nor does the Rule restrict consideration of any other relevant factors. *See, e.g., Williams v. State of Vermont*, Opinion No. 03-19WC (February 25, 2019), at 4.

After considering the evidence here, I conclude that a fee award is appropriate. Defendant contends that Claimant was written up for performance issues prior to the accident, but that does not negate his claim for benefits for a work-related accident. Further, Claimant sought prompt medical treatment, and his provider related his injuries to the work accident. Under the circumstances, I find that Defendant's course of action was unnecessarily adversarial. Further, and more importantly, I find that Claimant's attorney's efforts were instrumental in obtaining the benefits to which Claimant was entitled. Accordingly, I conclude that a discretionary award of attorney fees is warranted in this case.

Calculation of the Fee Award

Claimant's counsel submitted an itemized statement of time spent on this claim. The statement documents 3.9 hours of paralegal time and 4.25 hours of attorney time, including the time spent drafting and filing the fee petition. Time spent preparing a fee petition is recoverable, as set forth in *Human Rights Comm'n v. LaBrie, Inc.*, 164 Vt. 237, 252 (1995).

After review, I find that all the attorney and paralegal time spent on this claim is reasonable. However, the time spent prior to Defendant's April 11, 2025 denial is not recoverable, as that time was not spent "in response to" the denial, as required by the statute. Accordingly, I have removed 0.75 hours of attorney time and 1.1 hours of paralegal time from the itemized statement. This subtraction leaves 3.5 hours of attorney time and 2.8 hours of paralegal time.

Under Workers' Compensation Rule 20.1340, the applicable maximum rate for attorney work performed between July 1, 2024 and June 30, 2025 is \$255 per hour. The maximum rate for paralegal work during the same period is \$95 per hour. Accordingly, I calculate the fee award as follows:

Attorney time:	3.5 hours x \$255.00 = \$892.50
Paralegal time:	2.8 hours x. \$95.00 = \$266.00

TOTAL: \$1,158.50

**ORDER:**

Defendant is hereby **ORDERED** to pay attorney fees of \$1,158.50. Payment shall be made in a lump sum as provided in Workers' Compensation Rule 20.1700.

**DATED** at Montpelier, Vermont this 23 day of July 2025.

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Kendal M. Smith  
Interim 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.