

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Tyconia Westover

Opinion No. 03-26WC

v.

By: Stephen W. Brown
Administrative Law Judge

Dollar General Corp.

For: Kendal M. Smith
Commissioner

State File No. RR-56296

ORDER ENFORCING LIEN FOR ATTORNEY FEES

BACKGROUND:

Claimant has engaged attorney Shane Clark of Kissane Associates to represent her in a workers' compensation claim for injuries related to her employment with Defendant. Attorney Clark filed his Notice of Appearance with the Department on March 16, 2022. 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 Clark provided legal services to Claimant under the agreement.

On March 6, 2026, Attorney Clark filed a request for lien acknowledgement, and the Department acknowledged his lien pursuant to Workers' Compensation Rule 20.1900. That same day, Attorney Clark submitted a request to enforce his lien in the amount of one-third of Claimant's permanent partial disability benefits. During a pretrial conference held on March 17, 2026, Administrative Law Judge Stephen Brown advised Attorney Clark that Workers' Compensation Rule 20.1920 limits enforcement of attorneys' liens in cases involving contingency fee agreements to twenty percent. Later that day, Attorney Clark submitted a revised request for lien enforcement in that amount.

Although the parties dispute whether Claimant is at end medical result and the extent to which Claimant's accepted workplace injury caused various of her current medical complaints, Defendant is advancing permanent partial disability payments to Claimant based upon Douglas Kirkpatrick, MD's seven percent whole person impairment rating attributable to her shoulder. None of Dr. Kirkpatrick's impairment rating is attributable to Claimant's alleged spinal conditions.

There is no memorialization of this advancement on file with the Department, and the parties had some difficulty in clarifying the specific amount that Defendant was advancing weekly. Subsequent communications, however, have clarified that Defendant is advancing permanent partial impairment benefits in the amount of \$741.76 per week, which is consistent with the compensation rate calculated on the most recent Form 28 in the Department's file. This results in a total permanent partial disability award for the shoulder of \$21,028.90, computed as follows pursuant to Workers' Compensation Rule 10.1400:

405 weeks × 7% = 28.35 weeks
28.35 weeks × \$741.76 = \$21,028.90

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.

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."

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.

This does not prohibit an attorney from collecting a one-third contingent fee, but simply limits the amount that the Department can enforce as a lien. Attorneys may collect the remainder of their one-third contingent fees, provided the fees are reasonable, by making other contractual arrangements with their clients and/or any applicable third-party payment sources. *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.

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 the enforcement of Kissane Associates' lien in the amount of 20 percent of Claimant's permanent partial disability benefits for her shoulder condition. Defendant is ORDERED to pay the final twenty percent of the permanent partial disability benefits currently being advanced to Claimant, in the amount of \$4,205.78,¹ comprising the final 5.67 weeks² of such benefits, to her attorneys, Kissane Associates, in a lump sum.

DATED at Montpelier, Vermont this 30th day of March 2026.

Chris Winters
Deputy Commissioner

¹ $\$21,028.90 \times 20\% = \$4,205.78.$

² $28.35 \text{ weeks} \times 20\% = 5.67 \text{ weeks}.$