

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Ched Edenfield

Opinion No. 04F-26WC

v.

By: Beth A. DeBernardi  
Administrative Law Judge

United Ag & Turf NE, Inc.

For: Kendal M. Smith  
Commissioner

State File No. WW-62368

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

**APPEARANCES:**

Carey C. Rose, Esq., for Claimant  
Glenn S. Morgan, Esq. and Erin K. Morgan, Esq., for Defendant

**EXHIBITS:**

Claimant's Exhibit 1:	Itemized statement of attorney fees
Claimant's Exhibit 2:	Medical bills
Defendant's Exhibit A:	Carrier's explanation of review for October 10, 2025 medical bill
Defendant's Exhibit B:	Email correspondence concerning Defendant's offer to pay temporary disability benefits without prejudice
Defendant's Exhibit C:	Medical record of July 18, 2025 wellness visit

**FEE PETITION:**

On November 20, 2025, Claimant's counsel filed a Petition for Attorney Fees after obtaining an Interim Order of Benefits on Claimant's behalf. Defendant objected to the fee petition on December 15. Claimant's counsel replied on December 18, and Defendant filed a sur-reply on December 23.

**BACKGROUND:<sup>1</sup>**

Claimant worked for Defendant as a general manager. He alleges that he sustained a work-related lumbar spine injury on May 15, 2025. Claimant sought medical treatment for his injury but continued to work for Defendant after his injury for about two months. He then separated from employment around July 17, 2025, for reasons that are disputed.

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<sup>1</sup> The facts set forth in this Background section are found for the purposes of this fee petition only. *See generally Specialist's Referral Memorandum and Interim Order of Benefits dated October 30, 2025.*

Defendant initially handled this workers' compensation claim as a "medical-only" claim, as Claimant continued to work for several months following his injury. Defendant paid the medical bills that it received for the claim, starting with the initial bill for treatment on May 15, 2025. However, Claimant's treating providers sent some medical bills to Claimant's regular health insurance. As Defendant did not receive those bills, it did not pay them in the course of adjusting the claim.

Following his separation from employment, Claimant hired an attorney to represent him and asserted a claim for temporary total disability benefits. Claimant's attorney entered her appearance on August 12, 2025.

On September 11, 2025, the Department received a claim denial (Form 2) from Defendant. As written, the Form 2 denied the entire claim. However, when Defendant's counsel entered his appearance four days later, he clarified that the carrier had been treating the claim as a "medical-only" claim and explained that the carrier was denying the recent claim for temporary total disability benefits based on the circumstances of Claimant's separation from employment. According to Defendant, Claimant's employment was terminated in mid-July based on an incident where someone allegedly stole a bank deposit that Claimant was supposed to make on behalf of his employer from Claimant's vehicle.

Claimant disputes the circumstances surrounding his separation from employment. He contends that his employment was terminated on or about July 17, 2025, because Defendant could not accommodate his work restrictions. Claimant's treating provider eventually took him out of work on August 7, 2025.

On September 4, 2025, Claimant's counsel filed a request for a hearing.<sup>2</sup> On October 16, 2025, Defendant offered to pay temporary total disability benefits on a without prejudice basis, while it continued to investigate the claim. Claimant's counsel declined that offer and chose to proceed with an informal conference. *See Defendant's Exhibit B.*

On October 29, 2025, the Department's Specialist held an informal conference on the claim. During the conference, Defendant's counsel confirmed that Defendant had paid the medical bills received to date and represented that it would continue to pay them without an interim order.<sup>3</sup> Defendant continued to dispute Claimant's claim for temporary disability benefits, as the parties disagreed about the reason for his separation from employment.

Although Defendant was paying the medical bills and represented that it would continue to do so without an interim order, Claimant's counsel asked the Specialist to issue such an order. Accordingly, the Specialist issued an Interim Order for medical benefits on October 30, 2025.

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<sup>2</sup> Claimant's counsel filed a letter with the Department that was treated as a hearing request pursuant to Workers' Compensation Rule 14.1110.

<sup>3</sup> Defendant received and paid medical bills for service dates of May 15, May 16, June 5, June 27, July 7, July 21, July 29 and August 7. All these bills were paid prior to the informal conference. The only medical bill Defendant received that it did not pay prior to the conference was the one dated October 10, 2025. This bill was not paid initially as it was submitted without the required supporting medical report. *See Defendant's December 15, 2025 Objection to Claimant's Motion for Attorney Fees; Defendant's Exhibit A.*

As the Specialist was unable to resolve the parties' dispute over temporary total disability benefits, however, she referred that issue to the formal docket for resolution.

Following the issuance of the Interim Order for medical benefits, Claimant's counsel filed this Petition for Attorney Fees on November 20, 2025.

**DISCUSSION:**

Statutory Requirements for an Award of Attorney Fees

The Vermont Workers' Compensation Act provides that a claimant is eligible for consideration of a discretionary 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 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;

In this case, I conclude that Claimant has not met the statutory criteria for consideration of an attorney fee award because he has not yet "prevailed" on the disputed portion of his claim. Defendant did not dispute liability for medical bills, and payment of those bills therefore was not made to Claimant "as a result of the attorney's efforts." Further, the claim for temporary total disability benefits remains denied, and no such payments have been made.

Based on the foregoing, I conclude that Claimant's fee petition is premature. *See, e.g., Webber v. Justworks Employment Group, LLC*, Opinion No. 07F-24WC (May 21, 2024) (claimant must have "prevailed" before an award of attorney fees may be considered). The parties' dispute over temporary total disability benefits is currently pending on the formal docket. Should Claimant eventually prevail on that claim, he may file another attorney fee petition for consideration.

**ORDER:**

Based on the foregoing, Claimant's November 20, 2025 petition for an award of attorney fees is hereby **DISMISSED WITHOUT PREJUDICE**.

**DATED** at Montpelier, Vermont this 1st day of April 2026.

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Chris Winters  
Deputy 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.