



Issue Date: 27 December 2007

Case No.: 2007-LDA-00081
OWCP No.: 02-141934

In the Matter of:

D.W.,

Claimant

v.

**SERVICE EMPLOYEES INTERNATIONAL, INC./
THE INSURANCE COMPANY OF THE STATE OF
PENNSYLVANIA**

Employer/Carrier.

**ORDER APPROVING AGREED SECTION 8(i) SETTLEMENT AND AWARDING
ATTORNEY FEES**

This claim arises under the Defense Base Act ("DBA"), 42 U.S.C. § 1651 et seq., an extension of the Longshore and Harbor Workers' Compensation Act, as amended ("Act"), 33 U.S.C § 901 et seq.

Pursuant to agreement and stipulation by and between the interested parties, and having conducted further investigation in the above-titled claim as necessary with a review of the Administrative file, and no hearing considered necessary by this Administrative Law Judge, this Administrative Law Judge makes the following:

STIPULATIONS AND FINDINGS OF FACT

1. The Claimant was employed by the Employer as a vector control specialist in Iraq on March 22, 2005.
2. The Claimant alleges cervical disc injuries related to an IED explosion which occurred in the course of his employment on or about March 22, 2005.
3. At the time of the Claimant's injury, the Employer was insured by The Insurance Company of the State of Pennsylvania for purposes of liability under the DBA.
4. The Claimant's average weekly wage at the time of his injury was \$900.00.

5. The Claimant underwent an anterior cervical discectomy with decompression at C4-5 and C5-6, allograft arthrodesis at C4-5 and C5-6, and anterior screw plate fixation from C4 through C6 on April 7, 2005.
6. The Employer has not paid the Claimant any compensation, nor has it paid any of the Claimant's medical expenses, for the March 22, 2005, cervical disc injury.
7. The Claimant was born on May 31, 1958.
8. The Claimant has not returned to work since March 22, 2005.
9. The Claimant has a college degree and has had significant post-college education.
10. The parties desire to settle the current claim involving the Claimant's injuries on the following basis, said amounts being agreed to provide sufficient compensation to the Claimant:
 - a. The Claimant shall receive \$145,000.00 in a lump sum, representing:
 1. \$86,400.00 for past accrued compensation benefits as of November 12, 2007;
 2. \$33,600.00 for future compensation benefits beyond November 12, 2007;
 3. \$15,000.00 for all past accrued medical expenses; and
 4. \$10,000.00 for future medical expenses.
 - b. The Claimant shall pay \$11,178.22 to his attorney, Mark L. Schaffer, Esq., representing attorney fees and expenses. The Claimant acknowledges that the amount shall be deducted from, and be a lien on, the award of compensation benefits.
11. Claimant is not now a Medicare recipient and, since the settlement is less than \$250,000, no Medicare set-aside is created as part of the settlement.
12. This Administrative Law Judge, pursuant to the authority vested in him in Section 8(i) of the Longshore and Harbor Workers' Compensation Act as amended, finds that this settlement is adequate, having considered the Claimant's age, education, and work history; the degree of his disability; the availability of work which he can perform; the cost and necessity of further medical treatment; and all other relevant factors as set forth in the stipulation, application and attachments thereto, in accordance with 20 C.F.R. §§ 702.242(a), 702.242(b)(1), and 702.243(f), and that it was not procured by duress.

13. This Administrative Law Judge further finds that the fee for legal services to be assessed against the Claimant's lump sum payment is within the scope of his financial circumstances as appropriate under 20 C.F.R. § 702.132(a).

In view of the foregoing, the undersigned approves of the agreed settlement and affixes final disposition of the Claimant's claim, discharging the liability of the Employer and Carrier for past and future compensation and medical benefits arising out of the Claimant's March 22, 2005, cervical disc injuries pursuant to the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act.

ATTORNEY'S FEES

"A settlement or agreement between the parties as to the amount of attorney fees to be paid in a case is not sufficient in and of itself to warrant an award of the fee agreed upon." *Ballard v. Gen. Dynamics Corp.*, 12 BRBS 966, 968 (1980). The claimant's attorney is still required to file a proper fee application in compliance with 20 C.F.R. § 702.132. *Id.* Pursuant to the Regulations, the fees approved for services performed on behalf of a claimant under the Act "shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of the benefits awarded." 20 C.F.R. § 702.132(a). The extent and character of the necessary work done, the professional status of the person performing the necessary work, and the normal billing rate for each category of professional involved in performing the necessary work must also be clearly set forth. *Id.* Work performed to obtain an attorney fee is not proper billable time expended in furthering the client's case and is not payable. See *Sproull v. Stevedoring Servs. of Am.*, 28 BRBS 271 (1994) en banc (Brown concurring in part) and the cases cited therein.

On December 20, 2007, the Claimant's counsel submitted an itemized billing statement showing 60.60 hours of work performed by Attorney Schaffer at an hourly rate of \$260.00 for a total of \$15,756.00 in attorney fees. Counsel also submitted a total of \$2,178.22 in itemized costs expended on the Claimant's behalf. The parties have agreed to the significantly lower amount of \$11,178.22, representing \$9,000.00 in attorney fees and \$2,178.22 in costs, to cover all attorney fees and costs, to be deducted from the Claimant's total award. Taking into consideration the requirements of 20 C.F.R. § 702.132 and the relevant information set forth in the petition, this Administrative Law Judge finds that there is no evidence of collusion, the financial arrangements of the settlement agreement adequately provide for the Claimant, the agreed upon fee of \$11,178.22 to cover all accrued attorney fees and costs is reasonable, and the financial circumstances of the Claimant are such that approval of the attorney fees and costs and payment of that amount from the Claimant's award of compensation benefits is appropriate.

ORDER

It is **ORDERED** that Employer and/or Carrier shall pay forthwith to the Claimant all amounts set forth in Stipulation and Findings of Fact Number 10 of this Compensation Order. Upon said payment, the Employer and/or Carrier's liability and obligations to the Claimant for past and future compensation and medical benefits under the Longshore and Harbor Workers' Compensation Act as extended by the Defense Base Act shall be forever discharged, as it relates

to the Claimant's March 22, 2005, cervical disc injuries. **It is FURTHER ORDERED** that the Claimant pay from the total compensation amount tendered by the Employer and/or Carrier, the sum of \$11,178.22 to Mark L. Schaffer, Esq. for attorney fees and costs expended on his behalf in this case.

A

Alan L. Bergstrom
Administrative Law Judge

ALB/MSW