

FINAL AWARD

(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 03-117955

Employee: Catrice Moore

Employer: Parkwood Manor

Insurer: Health Care Facilities of Missouri  
c/o Sedwick James

Date of Accident: November 11, 2003

Place and County of Accident: Cape Girardeau, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated March 24, 2006.

The Commission approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

The award and decision of Administrative Law Judge Lawrence C. Kasten, issued March 24, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 19<sup>th</sup> day of July 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

**AWARD**

Employee: Catrice Moore

Injury No. 03-1117955

Employer: Parkwood Manor

Additional Party: N/A

Insurer: Health Care Facilities of Missouri c/o of Sedgwick James

Hearing Date: February 14, 2006

Checked by: LK/kh

### **SUMMARY OF FINDINGS**

The employee settled her case on October 3, 2005 for \$6,880.50. The employee's former attorney had filed an attorney fee/lien for \$1,939.70. The employer-insurer paid the employee \$4,940.80 and put the \$1,939.70 in dispute in a trust account. The only issue at the hearing was the disputed attorney fee/lien. Therefore, the following 21 questions are not applicable in this case.

1. Are any benefits awarded herein? N/A.
2. Was the injury or occupational disease compensable under Chapter 287? N/A.
3. Was there an accident or incident of occupational disease under the Law? N/A.
4. Date of accident or onset of occupational disease? N/A.
5. State location where accident occurred or occupational disease contracted: N/A.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? N/A.
7. Did employer receive proper notice? N/A.
8. Did accident or occupational disease arise out of and in the course of the employment? N/A.
9. Was claim for compensation filed within time required by Law? N/A.
10. Was employer insured by above insurer? N/A.
11. Describe work employee was doing and how accident happened or occupational disease contracted: N/A.
12. Did accident or occupational disease cause death? N/A.
13. Parts of body injured by accident or occupational disease: N/A.
14. Nature and extent of any permanent disability: N/A.
15. Compensation paid to date for temporary total disability: N/A.
16. Value necessary medical aid paid to date by employer-insurer? N/A.
17. Value necessary medical aid not furnished by employer-insurer? N/A.
18. Employee's average weekly wage: N/A.
19. Weekly compensation rate: N/A.
20. Method wages computation: N/A.
21. Amount of compensation payable: N/A.

TOTAL: N/A.

Second Injury Fund liability: Future requirements awarded: N/A.

Said payments to begin (see findings) and be payable and be subject to modification and review as provided by law. N/A

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: See Findings of Fact and Rulings of Law regarding attorney fee/lien.

## **FINDINGS OF FACT AND RULINGS OF LAW**

On February 14, 2006, this case was set for a final hearing on the issue of the attorney's lien of Dan Rau, the employee's former attorney. Dan Rau appeared in person. On January 11, 2006, the Division sent notice of the hearing to the employee. Notwithstanding the notice, the employee did not appear at the hearing although she had previously appeared at Division settings on October 3 and October 25, 2003.

### **ISSUE:**

#### **1. Attorney's Lien**

**EXHIBITS:** The following exhibits were offered and admitted into evidence:

Lien Claimant's Exhibits:

1. Itemization of time and documents in support of time including contract of contingent fee agreement.
2. Medical records.
3. October 18, 2005 letter from Dennis Lassa.

**WITNESS:** Dan Rau

### **FINDINGS OF FACT:**

Based on a review of the evidence including the exhibits and the credible testimony of Dan Rau, I make the following Findings of Fact:

The employee's accident occurred on November 11, 2003. Attorney Dan Rau started representing the employee on November 20, 2003. Mr. Rau and the employee, Catrice Moore, entered into an employment contract. In the contract, the employee agreed to pay her attorney a fee of 25% of the amount collected plus expenses. The employee also understood and agreed that if the services of Mr. Rau were terminated by her actions, Mr. Rau shall charge a fair and reasonable amount as compensation for the time spent on her case together with any and all out-of-pocket expenses incurred on her behalf which Mr. Rau paid.

On November 24, 2003, a Claim for Compensation was prepared on behalf of the employee and filed with the Division on November 26, 2003. Starting on November 24, 2003, and continuing during the course of his representation, Dan Rau sent out 15 letters to health care providers requesting medical records and bills. Mr. Rau received and reviewed 119 pages of medical records and bills from 7 different health care providers. In addition, Mr. Rau prepared and sent 5 letters to Dennis Lassa, the attorney for the employer-insurer. Mr. Rau received and reviewed 3 letters plus documents from Mr. Lassa. Mr. Rau also prepared 6 letters or documents and sent them to the Division including requests for pre-hearings and mediations. Mr. Rau prepared for and attended a pre-hearing and mediation at the Division, and also prepared and sent a letter to the employee regarding settlement.

The medical records show that the employee had an injury to her thoracic spine in 1999 due to a motor vehicle accident. On November 11, 2003, the employee fell and had complaints of low back and left hip pain with tingling down her left leg to her toes. She was treated by Dr. Zahoor who ordered physical therapy and an MRI. The MRI showed a minimal disc bulge at L5-S1. She was referred to Dr. Schafer, an orthopedic surgeon. He stated that the MRI showed no significant abnormalities and he diagnosed a lumbar and left hip strain and ordered therapy. The employee was non-complaint with therapy. Dr. Schaffer ordered an MRI of the left hip and pelvis, which was normal for abnormalities of bone or muscles. He referred her to Dr. Burns for pain management. Dr. Burns recommended that the employee see a chiropractor three times a week. Dr. Burns continued to see her until he released the employee at maximum medical improvement on May 5, 2004 and rated the employee with no

permanent partial disability.

The employer-insurer disputed temporary total disability. The employer stated that they offered light duty but the employee left after working for 3 hours and it was deemed that the employee quit. In early February of 2004, Mr. Rau made a demand for temporary total disability to the attorney for the employer-insurer. In late February, Mr. Rau requested a pre-hearing, which was set and held on March 25, 2004. After the pre-hearing Mr. Rau sent a letter to the employer-insurer regarding the issue of temporary total disability. After no response two more letters were sent to the employer-insurer's attorney. A second pre-hearing was requested. Mr. Lassa sent Mr. Rau a letter at the end of April advising him that an advance of \$1,000.00 would be paid but there was still a dispute on subsequent temporary total disability. The \$1,000.00 advance was paid in early May of 2004, and the pre-hearing was cancelled. The advance represented a little over 7 weeks of disputed temporary total disability.

Mr. Rau received a message from the employee on August 24, 2004, that she had completed treatment. Mr. Rau then requested updated medical records from various health care providers and requested a mediation. The mediation was held on January 19, 2005. The employer-insurer was disputing some of the medical treatment and outstanding bills as being unauthorized. In a March 22 letter, the employer-insurer's attorney made an offer to settle for 12.5% of the body as a whole. In addition the employer-insurer agreed to waive the credit on the prior \$1,000.00 advance, and to pay the Cape Imaging MRI bill. The employer-insurer did not agree to pay Southeast Rehab or Dr. Givens, the chiropractor, because they continued to dispute those bills as being unauthorized.

On March 28, 2005, the employee sent Mr. Rau a letter stating that she appreciated all of his hard work on her workers' compensation case and thanked him for his continuing efforts.

There was also a dispute on the average weekly wage. After negotiation and exchange of documents, the rate of compensation was listed as \$137.66. Mr. Lassa prepared a Stipulation for Compromise Settlement for \$6,880.50, which represented 12.5% permanent partial disability of the body as a whole referable to the low back, which was mailed to Mr. Rau on May 5, 2005. Mr. Rau sent the employee a letter on May 9, 2005 with regard to the offer and the Stipulation for Compromise Settlement. On May 10, the employee contacted Mr. Rau's office that she was not ready to settle. On May 11, Mr. Rau made a written request for another mediation with the Division.

On May 27, the employee sent Mr. Rau a letter terminating him as her attorney. On May 27, Dan Rau filed a request leave to withdraw as attorney for the employee. He asserted a lien for attorney's fees in the amount of \$1,720.12 and expenses in the amount of \$1,449.58 for a total lien of \$3,169.70. On June 2, Chief Administrative Law Judge Knowlan granted Mr. Rau leave to withdraw as the employee's attorney and noted that the attorney's lien was received.

A pre-hearing was held on August 2. The minute entry indicates that the employee was unwilling to pay the lien of \$3,169.70 because she thought it was unfair but would consider something around \$1,700.00. The employer-insurer continued to make the 12.5% offer plus pay all medical bills except for about \$2,900 which was still in dispute as being unauthorized. On August 11, Mr. Rau amended his lien to reflect expenses in the amount of \$219.58 and attorney's fees in the amount of \$1,720.12 for a total lien of \$1,939.70.

On October 3, a pre-hearing was held. A Stipulation for Compromise Settlement for \$6,880.50 was signed and approved. The settlement was based upon a disability of 12.5% of the body as a whole referable to the low back with credit for the \$1,000.00 advance being waived and the employer-insurer agreeing to pay the bill for the MRI. In addition, the employer-insurer agreed to pay the chiropractic bills incurred from February of 2004 through May of 2004 (Those bills total \$1,968.00). The attorney's fee/lien of \$1,939.70 was noted to be in dispute. The employee received \$4,940.80. On October 18, Dennis Lassa, the attorney for the employer-insurer, sent a letter to Dan Rau advising him that a check for the disputed attorney fee lien was being held in trust until that issue was resolved. A mediation to resolve the issue of the attorney's fee and lien was held on October 25 but that issue was not resolved.

Mr. Rau presented an itemization of time that reflected 13.9 hours of documented time from November 24, 2003 through May 27, 2005 when he received the notice from the employee terminating his representation. The itemization does not include the time on November 24, 2003 to send 3 letters sent to health care providers for medical bills. Based on the prior time itemization that would be an additional .3 hours of time. That total does not include phone conferences or office appointments that could not be accurately documented. The normal billing rate for Davis & Rau P.C. is \$150.00 per hour and has been for the last 6 years. Davis & Rau, P.C. paid \$219.58 to various health care providers for medical records.

**RULINGS OF LAW:**

***Issue 1. Attorney's Lien:***

Section 287.260 RSMo states that the Division may allow a lien on compensation for fair, reasonable, and necessary attorneys fees for services in connection with the proceedings for compensation. 8 C.S.R. 50-2.010(15) states that if the services of an attorney are found to be necessary in proceedings for compensation, the Administrative Law Judge shall set a reasonable fee considering relevant factors which may include but are not limited to the nature, character and amount of services rendered, the amount in dispute, and the complexity of the case and may allow a lien on the compensation due to the claimant.

Employee: Catrice Moore

Injury No.: 03-117955

Mr. Rau had significant involvement in the prosecution of the claim on behalf of the employee. He represented the employee for a year-and-a-half from November 20, 2003 through May 27, 2005. In the case, there were disputes as to medical causation (the employee had prior back injury from a motor vehicle accident in 1999 and a subsequent motor vehicle accident in January of 2004), authorization of medical treatment, non-compliance of treatment, payment of medical bills, rate of compensation, temporary total disability including compliance with light duty, and nature and extent of permanent partial disability. During his representation, Mr. Rau obtained an advance of \$1,000.00 for disputed temporary total disability. During his representation, the employer-insurer made an offer to settle the case for \$6,880.50, which represented 12.5% body as a whole and to waive any credit for the \$1,000.00 advance. The employer-insurer also agreed to pay the MRI bill. The case ultimately settled under the same terms as the original offer made to Dan Rau, with the exception that the employer-insurer did agree to pay for the disputed chiropractic bills. Considering the facts of the employee's case, I find that the employee was well represented by Dan Rau.

Based on the findings of fact and a review of the evidence and taking into account the nature, character and amount of services rendered, the amount in dispute, and the complexity of the case, I find that the fair, reasonable, and necessary attorneys fees for Mr. Rau is a minimum of \$2,130.00 (14.2 hours of documented time at the rate of \$150.00 per hour). I also find that the \$219.58 in expenses was fair, reasonable, and necessary in the prosecution of the employee's claim. Mr. Rau is requesting an attorney's fee in amount of \$1,720.12, which is based on the 25% contingency fee that he and the employee agreed to in the employment contract. The amount requested by Mr. Rau is less than the *quantum meruit*. I therefore award to Dan Rau, attorney at law, a fee of \$1,720.12 plus \$219.58 in expenses totaling \$1,939.70 for fair, reasonable and necessary legal services rendered on behalf of the employee in connection with the proceedings for compensation. The amount of said fee shall constitute a lien on the sum agreed to in the Stipulation for Compromise Settlement.

Date: \_\_\_\_\_ Made by:

\_\_\_\_\_  
Lawrence C. Kasten  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Ms. Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*