



**TENNESSEE BUREAU OF WORKERS' COMPENSATION
COURT OF WORKERS' COMPENSATION CLAIMS
AT NASHVILLE**

CARLA SCRUGGS,)	Docket No. 2021-08-0875
Employee,)	2021-08-0876
v.)	
AMAZON.COM SERVICES, LLC,)	State File No. 39617-2021
Employer,)	800483-2021
And)	
AMERICAN ZURICH INS. CO.,)	Judge Kenneth M. Switzer
Carrier.)	

ORDER GRANTING ATTORNEY'S FEES

The Appeals Board found Amazon.com Services, LLC's appeal frivolous and gave clear, unambiguous instruction: "[W]e . . . remand the case to the trial court for a determination of attorneys' fees and costs to be awarded to Employee." Ms. Scruggs's counsel filed an affidavit and other proof. Amazon does not object to the amount requested but rather challenges the Appeals Board's authority to find an appeal frivolous. After argument on September 1, 2022, the Court orders Amazon to pay Ms. Scruggs's attorney the requested amount of \$ 10,080.00.

The Parties' Positions

Ms. Scruggs's attorney filed an affidavit asserting that he spent 28.8 hours on the appeal but offered no breakdown of the time and tasks he put forth. The requested hourly rate is \$350, for a total of \$10,080.00. The Court ordered that he supplement the filing with an accounting of his time and tasks, and other documentation to support the request.

Counsel filed a revised affidavit, in which he states that he supervises the workers' compensation attorneys in his firm and has approximately fourteen years of experience in the field. He is a frequent continuing legal education speaker and a member of committees designed to improve the workers' compensation system.

Ms. Scruggs's attorney listed the tasks he performed regarding the appeal:

- a. Receiving and reviewing Employer's Notice of Appeal and Employer's brief;
- b. Researching the issues raised (and in some cases, waived) by the appeal;
- c. Reviewing the Trial Court proceedings, filings and hearing transcripts;
- d. Drafting, revising and finalizing Employee's brief;
- e. Receiving and reviewing the Appeals Board Opinion;
- f. Conferring with my client regarding the status of the appeal;
- g. Researching the circumstances and calculation of an award of attorneys' fees for frivolous appeals in Tennessee; and
- h. Drafting, revising and finalizing Employee's Motion for Attorneys' Fees and supporting affidavit.

Ms. Scruggs's attorney also attached affidavits regarding the requested hourly fee. One of them is from an attorney within his firm, so the Court gave it little weight. The other is from an employees' workers' compensation attorney practicing with another Memphis firm, Monica Rejaei. Ms. Rejaei gave her qualifications, explained that workers' compensation requires specialized knowledge and experience, and stated that the \$350 hourly rate is "reasonable for time and experience involved in this type of action."

Amazon's response and its oral argument does not contest Ms. Scruggs's fee application but instead focuses on the Appeals Board's authority to award expenses and fees for frivolous appeals. Amazon argues that Tennessee Code Annotated section 50-6-217 does not expressly authorize the Appeals Board to deem an appeal frivolous and remand for a determination of fees and costs. Amazon further contends that the Bureau administrator "inappropriately broadened" the statutory authority in section 50-6-225 to expand that authority to the Appeals Board in Tennessee Compilation Rules and Regulations 0800.02-22-.09(4) (October, 2020).

Law and Analysis

This Court was instructed to determine a reasonable award of fees. The Appeals Board requested *that task, and that task only*.

Therefore, the Court respectfully declines Amazon's invitation to rule on whether the Appeals Board possesses the authority to find an appeal frivolous and remand for calculation of a reasonable award of fees and costs. This Court will answer the sole question before it: what is a reasonable award of attorney's fees?

Ms. Scruggs's attorney asks for consideration of an award of "any dollar amount that it believes would fulfill the purpose of this penalty and discourage the Employer from abusing the litigation process in such a way in the future, as it has in this case." Counsel cites no legal authority for this proposition, and the Court rejects it.

Instead, to determine a reasonable award, the Court shall make specific findings considering the ten factors in Tennessee Supreme Court Rule 8, Rules of Professional Conduct 1.5(a). *See also Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 169-70 (Tenn. 2011). The ten factors are:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent;
- (9) prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and
- (10) whether the fee agreement is in writing.

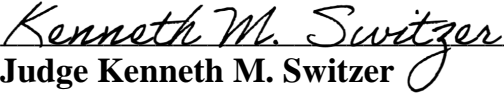
Here, Ms. Scruggs's attorney testified that he spent 28.8 hours shepherding the appeal to its successful conclusion. The questions were not novel or difficult; it was deemed frivolous, after all. But workers' compensation appeals are specialized and require familiarity with the Board's rules. The time counsel spent on this appeal precluded him from working on other cases. Attorney Rejaei's affidavit substantiates counsel's assertion that the appeal required specialized knowledge and experience. She also supported the reasonableness of the requested hourly rate. The results obtained, additional medical benefits, are certainly valuable to Ms. Scruggs. Counsel has substantial experience, is highly regarded within the legal community, and plays leadership roles within his firm and in organizations designed to improve the workers' compensation system. These factors all weigh in favor of the requested amount.

Amazon does not contest any of the above findings.

Therefore, the Court orders that it pay Ms. Scruggs's attorney fees of \$10,080.00.

IT IS ORDERED.

ENTERED September 12, 2022.


Judge Kenneth M. Switzer
Court of Workers' Compensation Claims

CERTIFICATE OF SERVICE

I certify that a copy of this Order was sent as indicated on September 12, 2022.

Name	Certified Mail	U.S. Mail	Via Email	Service sent to:
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