Workers' Compensation
Commission Division
FILED: June 27, 2011

No. 1-10-1602WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MARTIN EVANS, Widower of BONNIE HARDEN,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 09—L—50997
ILLINOIS WORKERS' COMPENSATION COMMISSION and UNITED AIRLINES, INC.,	)	
Defendants	)	Honorable Sanjay T. Tailor,
(Paul W. Grauer & Associates, appellant).	)	Judge, Presiding

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice McCullough and Justices Hoffman, Holdridge, and Stewart concurred in the judgment.

ORDER

Held: (1) Law firm's challenge to matters other than the propriety of the Commission's award of attorney fees has been waived because arguments are undeveloped and supported by little or no relevant authority; (2) moreover, because law firm is only a party to the collateral matter of the appropriate award of attorney fees and costs to it, issues other than propriety of attorney fee award to law firm was not properly

raised and would not be considered by reviewing court; and (3) Commission's award of $2,925 in attorney fees to law firm did not constitute an abuse of discretion where record demonstrates that the Commission considered relevant factors in awarding attorney fees on a *quantum-meruit* basis.

Paul W. Grauer & Associates (the firm) filed a petition for attorney fees and costs related to its representation of Bonnie Harden (Harden), a former client, before the Illinois Workers' Compensation Commission (Commission). The Commission affirmed and adopted the decision of the arbitrator awarding the firm $2,925 in attorney fees and $1,032.40 in costs. Following confirmation of the Commission's decision by the circuit court of Cook County, the firm appeals the award of attorney fees. We affirm.

According to the record, Harden worked as a flight attendant for United Airlines, Inc. (United). The firm was retained by Harden in 1998 and continued its representation until October 2004. During that time, the firm filed 11 applications for adjustment of claim on Harden's behalf, alleging various injuries to Harden's person while in United's employ. The claims were later consolidated, but in October 2004, the firm withdrew as Harden's counsel. Thereafter, Harden hired attorney Martha Garcia (Garcia) of Katz, Friedman, Eagle, Eisenstein, *et al*., to represent her. Garcia negotiated a settlement agreement with United in late 2006, but Harden passed away prior to its finalization. Garcia was subsequently retained by Martin Evans (Evans), Harden's husband. Thereafter, the settlement amount was renegotiated in light of Harden's death.

On October 20, 2004, the firm filed a petition for attorney fees and costs pursuant to sections 16 and 16a of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/16, 16a (West 2004)). On April 12, 2007, the firm filed the amended petition for attorney fees and costs that is the subject of this appeal. Among other things, the firm contended in the amended petition that it was entitled

to attorney fees on the basis of *quantum meruit* for its representation of Harden. The matter proceeded to arbitration on September 10, 2008, before arbitrator Paula Gomora. Paul Grauer (Grauer), the principal of the firm, and Garcia both testified at the hearing.

Grauer testified that two exhibits were attached to the amended petition for attorney fees and costs. Exhibit A is a compilation of the professional services that were provided to Harden in conjunction with the 11 claims that were filed on her behalf. According to exhibit A, during the firm's representation of Harden, the firm's attorneys spoke with Harden by telephone, ordered and reviewed medical records, sent correspondence to and received correspondence from Harden, attended proceedings before several arbitrators, participated in numerous telephone conferences with United's counsel, and engaged in various other case-management tasks. Grauer testified that in all, between January 1998 and January 2005, the firm spent more than 168 hours prosecuting Harden's claims. According to Grauer, the customary billing rate for attorneys engaged in workers' compensation proceedings is $225 per hour. Applying the customary rate to the number of hours the firm spent on Harden's claims resulted in a fee of more than $36,000. Grauer acknowledged that the firm employs support staff, including an individual whose principal responsibility is to secure all medical records and documentation. However, he stated that the itemized time for professional services in exhibit A does not include clerical or paralegal time. Grauer also testified that the total costs incurred for the firm's representation of Harden was $1,635.53, as listed on exhibit B.

Grauer recounted the circumstances surrounding the firm's withdrawal as Harden's counsel. Grauer noted that at all times relevant to these proceedings, Harden was an out-of-state resident, living either in Colorado or California. Grauer explained that prior to October 2004, Harden advised

him that she had been diagnosed with stage III breast cancer. At some point, United had requested an independent medical examination (IME) (see 820 ILCS 305/12 (West 2004)). The firm and United's attorney debated whether the IME should take place in Chicago or California. Respondent eventually filed a motion to compel Harden's attendance at the IME, and the matter proceeded to a hearing on September 9, 2004. Other than the motion to withdraw, Grauer indicated that this was the only motion that required a substantive hearing. Ultimately, the arbitrator determined that the IME should proceed in Chicago. Harden, however, advised the firm that she would not be attending the IME, which had been scheduled for October 8, 2004. On October 20, 2004, the firm prepared a motion to withdraw as counsel for Harden. Following a hearing before an arbitrator, the firm was allowed to withdraw. According to Grauer, the firm withdrew because Harden refused to comply with its advice to settle or try her claims given her illness.

Garcia testified that Harden contacted her in October 2004 to represent her. Harden advised Garcia that she had objected to the firm's withdrawal in writing to the arbitrator. Garcia agreed to represent Harden. Garcia testified that she is very familiar with United and its practices. Garcia further testified that she represents between 150 and 170 United flight attendants and pilots at any one time, that she is well versed in the collective bargaining agreements pursuant to which United employees work, that she has been trained by the union with respect to their terms and benefits of employment, and that, over the last 22 years, she has trained union representatives regarding Illinois' workers' compensation law. According to Garcia, Harden expressed her willingness to settle her claims against United. Garcia then obtained Harden's entire medical file from United for a fee of $20. By late 2006, Garcia had negotiated a settlement for $120,000, $10,000 of which was to be

allocated to Medicare because Harden was receiving social security benefits. Garcia also recalled that late in 2006, Harden informed her that she had resumed cancer treatment and that the cancer had metastasized, but that she had been cancer free for five years. Harden passed away on March 30, 2007. Thereafter, Garcia was retained by Evans, Harden's husband at the time of her death, to conclude the case. The settlement amount was renegotiated in light of Harden's death to the amount of $85,000, which was acceptable to Evans.

The arbitrator determined that the firm was entitled to attorney fees for the reasonable value of its services based upon a theory of *quantum meruit*. However, the arbitrator noted that the firm's claim for attorney fees exceeded the $17,000 available under the $85,000 settlement. As such, the arbitrator indicated that the itemization prepared by the firm (exhibit A) was of "little use." In addition, the arbitrator determined that many of the time entries in exhibit A were inflated with clerical time or consisted of a standard charge for time instead of the actual time spent on the task. The arbitrator noted, for instance, that every entry labeled "legal services" was charged at 0.25 hours or 15 minute increments. The arbitrator did not find credible that it would take 15 minutes for an attorney to instruct support personnel to prepare a fax and then read the prepared fax for accuracy. Further, the arbitrator disputed Grauer's assertion that the itemization of professional services in exhibit A was exclusively for attorney time, noting that the firm had an individual dedicated to obtaining medical documentation.

The arbitrator also characterized the firm's representation of Harden as "reactive rather than proactive." The arbitrator explained that the majority of time the firm represented Harden, its attorneys engaged in tasks that did not require legal expertise, only organizational and delegational

skills. The arbitrator added that when the legal ability of the firm's attorneys was required, at the time respondent moved to compel Harden's appearance at the IME in Chicago, there was no indication that the firm filed a response or made a record of the hearing on the motion. The arbitrator also found "little advocacy" in the firm's representation of Harden that ultimately contributed to the settlement of her claims. In addition, the arbitrator stated that the firm had "abandon[ed]" Harden, when, despite her objection, it sought to withdraw as counsel. The arbitrator also pointed out that Garcia did not have to rely upon any of the work completed during the firm's representation of Harden, save the applications for adjustment of claim and a motion to consolidate. The arbitrator commended Garcia for entering her appearance on older claims, knowing that the presiding arbitrator would be exerting pressure to settle or try the claims. Ultimately, the arbitrator awarded the firm $2,925 in attorney fees for services rendered in the preparation of each of the 11 claims and two motions to consolidate, representing 13 hours of work at a rate of $225 per hour. The arbitrator concluded that Garcia was entitled to the remainder of the available attorney fees, or $14,075.

The arbitrator further noted that although the firm requested reimbursement of expenses in the amount of $1,635.53, it only provided receipts in the amount of $1,072.40. From this amount, the arbitrator deducted a $40 expense for a clerking service to present the firm's motion to withdraw and for fees and costs at the arbitrator's status call on October 28, 2004. Thus, the arbitrator awarded the firm $1,032.40 in expenses.

On review, the Commission affirmed and adopted the decision of the arbitrator. Thereafter, the circuit court of Cook County confirmed. This appeal followed.

IV. ANALYSIS

On appeal, the firm devotes the majority of its brief to challenging matters other than the propriety of the Commission's award of attorney fees to it. For instance, the firm contends that the Commission did not have "jurisdiction to award fees to Attorney Garcia." The firm also disputes whether Evans was "properly deemed or appointed a representative or 'dependent' " of Harden, whether Evans "has any proper right, standing or authority in these cases," and whether Garcia's fee contract with Harden terminated upon Harden's death. For the most part, these arguments are undeveloped and supported by little or no relevant authority. As such, they are deemed waived pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Sept. 1, 2006). *People v. Young*, 365 Ill. App. 3d 753, 773 (2006). More significant, the firm is not a party to the underlying case between Evans and United. It is only a party to the collateral matter of the appropriate award of attorney fees and costs to it in the context of the settlement reached by Evans and United under the representation of Garcia. See *Alvarado v. Industrial Comm'n*, 216 Ill. 2d 547, 559 (2005) (recognizing that petition for attorney fees and costs is a collateral matter distinct from the underlying case). As such, we find that the firm does not have standing to challenge any issue other than the propriety of the Commission's award of attorney fees to it.

We now turn to the propriety of the attorney fees award. We review the Commission's award of attorney fees for an abuse of discretion. *DeSalvo v. Industrial Comm'n*, 307 Ill. App. 3d 628, 633-34 (1999); see also *DeLapaz v. Selectbuild Construction, Inc.*, 394 Ill. App. 3d 969, 972 (2009). An abuse of discretion occurs if no reasonable person would take the view adopted by the Commission. See *DeLapaz*, 394 Ill. App. 3d at 972; *Homebrite Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333, 337 (2004).

Section 16 of the Act (820 ILCS 305/16 (West 2004)) grants the Commission "the power to determine the reasonableness and fix the amount of any fee of compensation charged by any person, including attorneys *** for any service performed in connection with [the] Act, or for which payment is to be made under [the] Act or rendered in securing any right under [the] Act." The Act also expressly directs the Commission to hear and determine disputes involving the division of attorney fees where the claimant has been represented by more than one attorney. 820 ILCS 305/16a(J) (West 2004); see also 50 Ill. Adm. Code § 7080.10(b) (2004) ("The Commission may also enter an award setting partial attorney's fees for an attorney who has withdrawn based on the reasonable value of services rendered and the actual time expended"). In this case, the firm requested attorney fees for its representation of Harden on a *quantum-meruit* basis. "When an attorney claims fees based on *quantum meruit* and the right to recovery is established, the court should literally award the attorney as much as she deserves." *Anderson v. Anchor Organization for Health Maintenance*, 274 Ill. App. 3d 1001, 1007 (1995); see also Black's Law Dictionary 1255 (7th ed. 1999) (noting that the term "*quantum meruit*" is Latin for "as much as he has deserved"). In determining the reasonable value of an attorney's services on a *quantum-meruit* basis, the Commission should assess all relevant factors, including the time and labor required, the attorney's skill and standing, the nature of the cause, the novelty and difficulty of the subject matter, the attorney's degree of responsibility in managing the case, the ususal and customary charge for that type of work in the community, and the benefits resulting to the client. *DeLapaz*, 394 Ill. App. 3d at 973; *Anderson*, 274 Ill. App. 3d at 1008.

In this case, we cannot conclude that no reasonable person would take the view adopted by

the Commission. At the hearing that was held on the amended petition for attorney fees and costs, the firm presented testimony and an exhibit regarding the work it performed in prosecuting Harden's claims. Based on this evidence, the arbitrator determined that the firm was entitled to recover for 13 hours of work at $225 per hour, or a total of $2,925. In reaching this result, the arbitrator considered several of the factors outlined in the preceding paragraph. For instance, with respect to the time and labor required, the arbitrator determined that many of the time entries in exhibit A were inflated. The arbitrator also explained that the majority of time the firm represented Harden, its attorneys engaged in tasks that did not require legal expertise, only organizational and delegational skills. The arbitrator also touched upon the firm's degree of responsibility in managing Harden's case, noting that when respondent moved to compel Harden's appearance at the IME in Chicago, there was nothing to indicate that the firm filed a response or made a record of the hearing on the motion. The arbitrator also considered the benefits to Harden of the firm's representation, concluding that the firm did little to contribute to the ultimate settlement of Harden's claims. In this regard, the arbitrator noted that Garcia did not have to rely upon any of the work completed during the firm's representation of Harden except for the applications for adjustment of claim and a motion to consolidate the claims. In addition, the arbitrator considered the usual and customary charges for this type of case as testified to by Grauer. The Commission affirmed and adopted the decision of the arbitrator. Based on our review of the record, we do not find that the Commission's award of attorney fees to the firm constituted an abuse of discretion.

The firm insists that the Commission "erred as a matter of law in disregarding [its] itemization of its services and time." The record does not support this notion. It is true that the

Commission found exhibit A of "little use" given the total charges assessed by the firm in light of the attorney fees available to be awarded. Nevertheless, it is evident from our review of the Commission's decision that it did review and consider exhibit A in fashioning the award of attorney fees. The firm also contends that the Commission "erred as a matter of law" in finding that it had "abandoned" Harden, when, in fact, the Commission granted its petition to withdraw. The firm claims that the finding of abandonment "had an adverse impact on the fee award." However, the comment was brief and, aside from the comment itself, we find no indication that this finding affected the award of attorney fees. To the extent that the remark was considered in setting the fee award, we decline to disturb the decision of the Commission given the other factors relied upon.

V. CONCLUSION

For the reasons set forth above, we affirm the judgment of the circuit court of Cook County which confirmed the decision of the Commission.

Affirmed.