BEFORE THE INDUSTRIAL ACCIDENT BOARD OF THE STATE OF DELAWARE

BARBARA D. PAUL-WHITE,	)	
	)	
Employee,	)	
	)	
v.	)	Hearing No. 1268615
	)	
CHRISTIANA CARE,	)	
	)	
Employer.	)	

DECISION ON PETITION TO DETERMINE ADDITIONAL COMPENSATION DUE

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause, by stipulation of the parties, came before a Hearing Officer of the Industrial Accident Board on June 3, 2009, in the Hearing Room of the Board, in New Castle County, Delaware. An extension of time for issuance of the decision was then taken pursuant to DEL. CODE ANN. tit. 19, § 2348(k).

PRESENT:

CHRISTOPHER F. BAUM
Workers' Compensation Hearing Officer

APPEARANCES:

Michael B. Galbraith, Attorney for the Employee

David R. Batman, Attorney for the Employer

NATURE AND STAGE OF THE PROCEEDINGS

Barbara D. Paul-White ("Claimant") was involved in a compensable work accident on April 10, 2005, while she was working for Christiana Care ("CC"). She sustained a neck injury and eventually underwent fusion surgery and diskectomy at C5-6 and C6-7.

On December 23, 2008, Claimant filed a Petition to Determine Additional Compensation Due, primarily seeking mileage reimbursement. Specifically, Claimant seeks reimbursement for 24,328.08 miles spent traveling for medical treatment.

A hearing was held on Claimant's petition on June 3, 2009. This is the decision on the merits of the petition.

SUMMARY OF THE EVIDENCE

Claimant testified that she is forty-two years old. In April of 2005, she lived in Delaware in the Christiana/Newark area. She worked for CC. On April 10, 2005, she was lifting a patient when she felt a pop in her neck. She initially received treatment from Dr. Chukwuma Obi Onyewu of Mid-Atlantic Pain Institute ("MAPI"). He provided conservative treatment, but Claimant was eventually referred to Dr. Kennedy Yalamanchili who performed surgery on October 21, 2008. Claimant also recalls having two functional capacity evaluations (FCE) performed. One was done at CC and the other was done down in Georgia.

Claimant explained that she currently resides in Loganville, Georgia. Following her injury, she has moved her residence several times. Her husband works for a pipefitting company and he has been transferred multiple times. In late 2005, Claimant moved to West Chester, Pennsylvania. In mid-2006, she moved to Georgia and remained there until July of 2007, when she and her husband moved to the Tampa, Florida area. She lived there until January of 2008, when her husband was hurt and no longer able to work. They then moved to Asbury Park, New

Jersey (where Claimant's parents live) for four months. Her husband then found a new job in Georgia, so Claimant moved to Loganville in mid-2008.

Claimant stated that she no longer is treating with Dr. Onyewu. When she was living in Tampa, she received pain management care from a doctor at Tampa Pain Relief. After she moved back to Georgia in 2008, she found a pain management doctor (Dr. Reeves) there. She started treatment with Dr. Reeves in January of 2009.

Claimant submitted her records of mileage. She either was driven (by her husband or daughter) or drove herself for treatment. At first, she calculated the mileage just using the car's odometer, but later she confirmed the odometer mileage by checking the miles calculated using map programs such as Yahoo Maps or Mapquest.

In 2005 and 2006, Claimant was seeing Dr. Onyewu at MAPI on a monthly basis. When she lived in Newark, Delaware, the round trip was 11.28 miles, and she made this trip from April 2005 until October 2005. She then moved to West Chester, and the round trip to MAPI was 49.72 miles. Her mileage log shows that she made this trip six times (November and December, 2005; February, March, April and May of 2006). At that point, she moved to Georgia for the first time. She continued to see Dr. Onyewu monthly through the remainder of 2006. The round trip from her Georgia residence to MAPI was 1447.46 miles.

According to Claimant's mileage log, after she moved to Florida she began to receive pain management care in Tampa. The round trip mileage was calculated at 40.48 miles. She went there nine times from September 2007 through February 2008. According to the mileage log, Claimant saw Dr. Onyewu again in March of 2008. At that time, she was living in New Jersey. The round trip was 227.22 miles. She then returned to Loganville, Georgia. She continued to travel monthly to MAPI from April to July 2008. The round trip mileage from her

new address in Georgia was calculated at 1450.28 miles. In August and September of 2008, she again went to Tampa Pain Relief.[1] In October 2008, Claimant travelled from Georgia to Dr. Onyewu's office again for a pre-operative visit. Her surgery then took place on October 21, 2008.

Claimant testified that she saw Dr. Yalamanchili for physical therapy and for preparation for surgery. Claimant stated that her trips from Asbury Park, New Jersey to Dr. Yalamanchili's office amounted to 100.2 miles. However, when she had to go to CC for pre-operative tests and visits, it was 226 miles round trip. Claimant's mileage log references six physical therapy visits in March of 2006, in which the round trip mileage was listed at 42.88 miles. Another six visits are referenced in April of 2007, again measured using the 42.88 trip mileage.[2]

Claimant stated that she has plans to see Dr. Yalamanchili in the future. She recently took a bus from Georgia to see him and the trip was 876 miles. She has looked for a new neurosurgeon in Georgia. She has contacted two, but neither was interested in taking her case because of the extent and severity of her case. In any event, she is pleased with the care she has received from Dr. Yalamanchili. Similarly, until she located her new pain management doctor in Georgia in January of 2009, she could find no pain management doctor in Georgia who would touch the case. They were not comfortable with the number of medications that she was on. She currently takes methadone (10mg) three times a day, OxyContin (20mg) twice per day, Ambien and Lexapro.

Claimant acknowledged that, prior to her work accident, she used to live in the Atlanta area. At that time, she treated with doctors in the Atlanta area, including a doctor for pain

[1] This would seem to indicate that Claimant was living in the Tampa area again in August and September 2008. Claimant did not mention such a period of residence, so the validity of this portion of the claim is questionable.
[2] In March of 2006, Claimant was living in West Chester, for which the mileage makes sense. However, in April of 2007, Claimant was living in Georgia. The mileage number does not make sense for that.

management (Dr. David Walega at Shepherd's Spinal Center). She received treatment there for two to two and a half years around 2004. The treatment was for a whiplash injury (neck). Treatment stopped and then she moved to Delaware. When she returned to Georgia, she attempted to go back to Shepherd's Spinal Center but the doctor she had previously seen there was no longer there and the Center was unwilling to pick up her care because her case was "intense."

Claimant's mileage claim includes trips for two FCEs. One that Claimant went to in Atlanta (28.4 miles) was ordered by a long-term disability insurance carrier. It was ordered through Dr. Onyewu. Claimant included it in her current claim because she felt that it related to her condition. Her mileage log also includes trips to see her lawyer and to come to the IAB, but those miles are not included on the summary sheet on the front of the mileage log and are not part of her claim for reimbursement.

While Claimant's parents live in Asbury Park, Claimant denied that any of the mileage for treatment (such as trips from Georgia) was also used to visit her parents. When she had her surgery in 2008, she stayed with her parents for four weeks, so the mileage requested during that period is from New Jersey. Thus, Claimant's travel to CC for her discharge after surgery is calculated at 226 miles, round trip.

There is an error in the log. One sheet references that Claimant went from New Jersey to Dr. Onyewu on November 14, 2008, then went from the doctor's office to Georgia (also on November 14), and then travelled from Georgia back to New Jersey on November 19 for an appointment with Dr. Yalamanchili. That is an error. Claimant did not go back to Georgia during that week. The correct order is that she travelled from New Jersey to Dr. Onyewu on November 14 (round trip), then on November 19 she travelled from New Jersey to Dr.

Yalamanchili and then from his office back to Georgia. The next page in the log (listing a trip from New Jersey to Dr. Yalamanchili on November 21) is also incorrect. She only saw Dr. Yalamanchili for one visit during that span. If the medical records show that the post-operative visit was on November 21, then she did not see him on November 19 at all. She would have returned to Georgia following the November 21 visit.

Claimant also stated that there is an error earlier in the log. On a page dealing with pre-operative visits there is a reference to a trip from New Jersey to CC to get a chest x-ray, followed by another trip from New Jersey to CC to deliver an MRI to Dr. Yalamanchili. That was actually all one trip, not the two separate trips given in the mileage log.

Alison Barkley testified on behalf of CC. She has been an adjuster for about twenty years and is familiar with Claimant's file and the payments made. Ms. Barkley confirmed that the workers' compensation carrier did not order the Atlanta FCE. It appears that that was ordered by a long-term disability carrier.

Ms. Barkley submitted a packet of information that gives payment details for mileage in conjunction with the information Claimant provided (Employer's Exhibit A). Ms. Barkley stated that, in determining what she considers to be compensable mileage, she reviews the medical records and determines if the miles are reasonable and necessary in relation to the medical treatment. For example, Claimant sought mileage for a monthly visit to Dr. Onyewu for July of 2006, but according to the medical records Claimant was a "no show" on July 1, 2006. Similarly, the carrier has no documentation of visits in September and October of 2006. There are no records to verify a visit to the doctor on those dates. Likewise, there is no medical

documentation or bills to substantiate physical therapy visits to Dr. Yalamanchili in March of 2006 or April of 2007.[3]

Ms. Barkley stated that, in paying mileage, the carrier used Claimant's original home address in Delaware and measured the miles from there. The address shown on the initial bill to the doctor's office was used to calculate all future trips, regardless of where Claimant may have been living at the time. Thus, for example, Form H of the packet shows reimbursement for mileage to MAPI in 2005 and 2008 measured at 8.3 miles round trip from Newark to Bear, Delaware. Mileage was paid at the rate of forty cents per mile.[4]

Ms. Barkley stated that she became involved in trying to arrange for care in Georgia for Claimant. Claimant had previously received such care from Dr. Walega at Shepherd's Pain Center. Ms. Barkley contacted Dr. Walega's office and she was informed that the doctor was unwilling to accept Claimant as a patient. The office stated that they did injections, but did not want to be involved in Claimant's pain management.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mileage Reimbursement

When an employee has suffered a compensable injury, the employer is required to pay for mileage to obtain reasonable medical treatment. DEL. CODE ANN. tit. 19, § 2322(g).

Before getting to the major issue in this case, some minor matters can be cleared away. First, the FCE in Atlanta is clearly not the responsibility of CC or its workers' compensation carrier. It did not ask for the FCE to be done. Rather, another carrier did. It is not truly

[3] Ms. Barkley clarified that she had no such documentation as of the time that the packet was prepared on May 1, 2009. She acknowledged that documentation may have been received after that time.

[4] Counsel represented that the legal rate for mileage up until July 1, 2006 was thirty-one cents per mile. After that date, it was raised to forty cents. As Claimant's claim crosses that date, different rates will apply depending on what mileage is in issue.

"treatment" for Claimant's injury at least within the workers' compensation context. Reimbursement for that trip is denied.

Also, obviously, the errors in Claimant's mileage log (such as the double trip to CC in October of 2008 and the confusion concerning the post-operative visits in November of 2008) are not compensable. Furthermore, the carrier is within its rights to deny mileage reimbursement when there is no supporting medical documentation (in the form of medical records or medical bills) to establish that there was a visit for medical treatment on the claimed date. As I do not have the medical records, I cannot state which dates are or are not valid, but the basic principle is clear: Claimant must provide supporting documentation of a medical visit before the carrier needs to pay for mileage to that visit. This is particularly true in the current case, because we know that Claimant's mileage log has errors as to dates and visits on it.

CC also raised a question as to whether the claimed mileage was strictly accurate (in other words, the question of actual odometer versus calculated mileage based on programs such as Mapquest). While reimbursement is to be for "actual" mileage, unless there is some evidence to show that programs such as Mapquest are giving inaccurate numbers, I find no basis to challenge Claimant's calculation using such programs. Indeed, Ms. Barkley for the carrier used a similar approach.

These are just basic principles involved with reimbursing for mileage and I do not believe that the parties are in any substantial disagreement with them.[5] The real issue for this case concerns how to calculate "proper" mileage. Claimant wants to be reimbursed for her actual miles travelled, regardless of distance. The carrier wants to calculate mileage either from

[5] Throughout the remainder of this decision, I periodically mention the "basic principles of reimbursement." It is these principles to which I am referring.

whatever address Claimant had at the time that treatment first began or based on "reasonable" mileage.

The parties agree that there is a paucity of case law on this subject. In fact, in the 1970s and 1980s, there was no statutory requirement for the employer to pay any mileage to medical appointments. Travel expenses were not considered included in the general requirement of an employer to pay medical expenses under the Workers' Compensation Act ("Act"). *See M & M, Inc. v. Wade*, 297 A.2d 403, 405 (Del. Super. 1972). The only statutory exception was that transportation expenses had to be paid for an injured employee to attend an employer-requested medical examination. *See M & M, Inc.*, 297 A.2d at 405; DEL. CODE ANN. tit. 19, § 2343(a). The Delaware Supreme Court later added another exception to require an employer to pay transportation costs to medical treatment or vocational rehabilitation services *offered* by the employer when an employee's refusal to undergo such treatment might result in a forfeiture of benefits under title 19, section 2353(a) of the Delaware Code. *See Mosley v. Bank of Delaware*, 372 A.2d 178, 180 (Del. 1977). The Court reasoned that, under such circumstances and in light of the potential of forfeiture, reason and fairness required the employer to pay reasonable travel expenses to ensure that the employee could make it to the offered services. *Mosley*, 372 A.2d at 180. However, if the medical treatment in question was not offered by the employer and forfeiture was not a risk, then the former rule that travel expenses were not paid remained in effect. *See General Motors Corp. v. Burgess*, 545 A.2d 1186, 1192 (Del. 1988)(noting that *M & M, Inc.* was still valid for the proposition that "employers [have] no obligation to pay travel expenses for employee-initiated medical examinations").

In 1999 or 2000, however, the Delaware General Assembly revised the statute to specifically provide that

> [a]n employee shall be entitled to mileage reimbursement in an amount equal to the State specified mileage allowance rate in effect at the time of travel, for travel to obtain:
>
> (1) Reasonable surgical, medical, dental, optometric chiropractic and hospital services; and
>
> (2) Medicine and supplies, including repairing and replacing damaged dentures, false eyes or eyeglasses, and provided hearing aids and prosthetic devices.

DEL. CODE ANN. tit. 19, § 2322(g).

Claimant argues that the statutory provision does not limit the amount of mileage that can be reimbursed and therefore the distance traveled is not open to challenge. In addition, the Act provides that a claimant has the right to employ a doctor of the claimant's own choosing. DEL. CODE ANN. tit. 19, § 2323. Thus, if Claimant has the right to choose her own doctor, it follows that the mileage to get to that chosen doctor should be subject to reimbursement.

CC, on the other hand, argues that all compensable medical treatment must be reasonable (as is stated in both Section 2322(g) and Section 2323) and that this requirement of reasonableness applies to the distance traveled to receive that treatment. In other words, while it may be "necessary" for Claimant to receive certain medical care, it is not necessarily "reasonable" to receive that care at far distances when more local treatment is available. Certainly, competent medical professionals exist in places other than the immediate Delaware area.

I find that there is some validity to both arguments. The statutory provision contains no suggestion that the legislature intended anything other than that an injured employee's actual mileage should be reimbursed. There is certainly nothing in the statutory language to support

Ms. Barkley's approach of using Claimant's home address at the time of injury as the starting point for calculating mileage for all future medical treatment.[6]

On the other hand, I find that CC is right that a reasonableness restriction must apply. It is axiomatic that when interpreting statutory language, the courts should avoid interpretations that lead to absurdities. *See Coastal Barge Corp. v. Coastal Zone Industrial Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985)("Ambiguity may also arise from the fact that giving a literal interpretation to words of the statute would lead to such unreasonable or absurd consequences as to compel a conviction that they could not have been intended by the legislature."). It is absurd to think that the legislature's intent in writing Section 2322(g) was that mileage should be reimbursed "no matter how unreasonable."

The issue, though, then becomes deciding what is "reasonable." The mere number of miles involved cannot be the sole factor considered. In some ways, this is similar to the analysis that is done with regard to possible forfeiture of benefits based on a refusal of medical treatment. In such cases, the Delaware Supreme Court has ruled that, in light of the "individualized focus" of the Act, the Board must decide "whether the treatment is reasonable for that specific claimant and not whether the treatment is reasonable generally for anyone with the claimant's condition." *Brittingham v. St. Michael's Rectory*, 788 A.2d 520, 523 (Del. 2002). Similarly, I find that "reasonable" mileage to medical treatment must involve individualized focus on the Claimant and the particular facts of her case.

In this case, Claimant's multiple moves are linked to her husband's occupation. There is no evidence and no suggestion that Claimant moved in bad faith. The first move was to West Chester, Pennsylvania, which is only about ten miles from the Delaware border. Being so close,

[6] Indeed, as Claimant pointed out, now that Claimant is receiving pain management care in Georgia the carrier certainly would not want to calculate mileage from the address-when-injured. Rather, it would calculate based on the actual mileage from Claimant's current residence.

it is understandable that Claimant chose to stay with her same doctors for treatment during that period. This is a minimal move and not so far as to cause any concern that the distance was unreasonable. Claimant should be reimbursed for her mileage from West Chester within the basic principles of reimbursement discussed earlier.

Claimant next moved to Georgia. Because Claimant returns to Georgia again later in the course of events, I will save discussion of this location for later. Claimant's next stop was in the Tampa, Florida area. While in this area, Claimant in fact arranged for local pain management services. She moved there in July of 2007 and started going to the Tampa Pain Relief Center in September. This is certainly a short enough period in which to have located a new service provider. Claimant's request for mileage reimbursement for trips from her Florida residence to the Florida treatment center should be paid within the basic principles of reimbursement discussed earlier. A review of Claimant's mileage log does not show that Claimant made any trips to see Dr. Yalamanchili while she was in Florida. Thus, the question of whether she should have located a new neurosurgeon while down in Florida is moot.

Claimant next spent some time in Asbury Park, New Jersey. However, Claimant was only living there temporarily for four months while her husband was in transition between jobs. For such a short period, it is reasonable and understandable that Claimant would not go through the effort to find new doctors and have medical files transferred so that the new doctors could begin care. This is different than when she lived in Florida and expected to be living there for an extended period of time. At least with respect to pain management, it made more sense (and, hence, was reasonable) to return to MAPI for care rather than continue with the Tampa facility. Simply stated, Claimant was not living in New Jersey long enough to make it unreasonable for her to see her Delaware doctors that were already familiar with her condition.

Claimant then returned to Georgia. With respect to Claimant's residence in Georgia, it is perhaps best to separate the issue of Claimant's pain management care with MAPI from that of her surgical care with Dr. Yalamanchili.

Claimant was in Georgia for two extended periods of time (mid-2006 to mid-2007; and mid-2008 until the present). Claimant only began to receive pain management care in Georgia from a new provider in January of 2009. For the remainder of the time in question, she went to Dr. Onyewu at MAPI. On the surface, for such a common service as pain management, this might seem unreasonable. However, Claimant testified that she tried to arrange for local care but that she was refused by providers who were concerned about the complexity of her case. Claimant's testimony in this regard is supported to some extent by Ms. Barkley. She testified that she was requested (by Claimant's counsel) to try to authorize Claimant to see a local doctor (Dr. Walega) that Claimant had seen for another injury years ago. Ms. Barkley confirmed that Dr. Walega and the treatment center he was connected with declined to become involved with the case.

This shows several things. First, it demonstrates that Claimant did make an effort to find local care in Georgia, so much so that she had her attorney ask the carrier to become involved to help her. Second, the carrier met the same sort of problem that Claimant had—reluctance on the part of the medical provider to accept her case. Claimant was faced with the choice of either not receiving pain management care or traveling a long distance to get it from a provider who was willing to provide it (*i.e.*, Dr. Onyewu). Under such circumstances, I do not find it unreasonable that Claimant chose to travel for her pain management care. Accordingly, I find that Claimant should be reimbursed for her mileage from Georgia to see Dr. Onyewu at MAPI, within the basic principles of reimbursement discussed earlier.

The issue with regard to Dr. Yalamanchili is similar. Claimant stated that she has been unable to find a neurosurgeon in Georgia who is willing to assume her care. Unlike the pain management care, there is no supportive evidence from Ms. Barkley concerning the difficulties of finding a neurosurgeon in Georgia, but the fact that Claimant had trouble with the pain management care makes it believable that she had similar problems with finding a neurosurgeon. Claimant also notes that she has a great degree of confidence in Dr. Yalamanchili so that she prefers to keep him as her doctor. While, as explained above, I do not believe that Claimant's right to choose her own treating doctor operates as an absolute bar to a challenge as to the reasonableness of the mileage involved, Claimant's right to choose a doctor should be given some deference.

Claimant also has shown good faith in minimizing her mileage. During the period of time when Claimant was preparing for her surgery with Dr. Yalamanchili and for the post-operative period, she again stayed with her parents in New Jersey. Certainly this was closer than traveling from her residence in Georgia. While, in theory, Claimant could have stayed in a Delaware hotel for this period, it is not unreasonable (and far less expensive) for her to want to stay with family members who were not outrageously far away.

For these reasons, I find that Claimant should be reimbursed for mileage for her actual visits for treatment with Dr. Yalamanchili within the basic principles of reimbursement mentioned earlier.

Attorney's Fee

A claimant who is awarded compensation is generally entitled to payment of a reasonable attorney's fee "in an amount not to exceed thirty percent of the award or ten times the average weekly wage in Delaware as announced by the Secretary of Labor at the time of the award,

whichever is smaller." DEL. CODE ANN. tit. 19, § 2320.[7] At the current time, the maximum based on Delaware's average weekly wage calculates to $9,160.00. The factors that must be considered in assessing a fee are set forth in *General Motors Corp. v. Cox*, 304 A.2d 55 (Del. 1973). Less than the maximum fee may be awarded and consideration of the *Cox* factors does not prevent the granting of a nominal or minimal fee in an appropriate case, so long as some fee is awarded. *See Heil v. Nationwide Mutual Insurance Co.*, 371 A.2d 1077, 1078 (Del. 1977); *Ohrt v. Kentmere Home*, Del. Super., C.A. No. 96A-01-005, Cooch, J., 1996 WL 527213 at *6 (August 9, 1996). A "reasonable" fee does not generally mean a generous fee. *See Henlopen Hotel Corp. v. Aetna Insurance Co.*, 251 F. Supp. 189, 192 (D. Del. 1966). Claimant, as the party seeking the award of the fee, bears the burden of proof in providing sufficient information to make the requisite calculation. By operation of law, the amount of attorney's fees awarded applies as an offset to fees that would otherwise be charged to Claimant under the fee agreement between Claimant and Claimant's attorney. DEL. CODE ANN. tit. 19, § 2320(10)a.

In this case, Claimant has established that she is entitled to reimbursement for mileage to receive medical treatment to the extent that the carrier receives proper documentation that the visits in question occurred. Because I cannot determine which particular visits are properly verified, I cannot set a specific amount of mileage. Mileage incurred prior to July 1, 2006, is to be reimbursed at the legal rate of thirty-one cents per mile, while mileage on or after that date is to be paid at the rate of forty cents per mile. Not knowing the number of miles or the specific dates involved, there is no way I can calculate the actual monetary value of the award at this time.

[7] Attorney's fees are not awarded if, thirty days prior to the hearing date, the employer gives a written settlement offer to the claimant that is "equal to or greater than the amount ultimately awarded by the Board." DEL. CODE ANN. tit. 19, § 2320. A settlement offer was tendered by CC, but it is for less than the amount awarded. Therefore, an attorney's fee award is appropriate in this case.

Claimant's counsel submitted an affidavit stating that he spent at least seventeen hours in preparing for this hearing, which itself lasted about two hours. Claimant's counsel was admitted to the Delaware Bar in 2006 and he has some experience in workers' compensation law, a specialized area of litigation. His firm's initial contact with Claimant was in August of 2007, so Claimant has been represented for about two years. This case was moderately complex and involved a novel issue of law. Counsel does not appear to have been subject to any unusual time limitations imposed by either Claimant or the circumstances. There is no evidence that accepting Claimant's case precluded counsel from accepting other clients. Counsel's fee arrangement with Claimant is on a one-third contingency basis. Counsel does not expect a fee from any other source. There is no evidence that the employer lacks the ability to pay a fee.

Taking into consideration the fees customarily charged in this locality for such services as were rendered by Claimant's counsel and the factors set forth above, I award to Claimant an attorney's fee in the maximum amount of thirty percent of the award. As noted above I cannot firmly make a determination as to the actual monetary amount of the award, so naturally I cannot specifically determine what thirty percent of that amount may be.[8]

[8] However, Claimant submitted a claim for 24,328.08 miles. Even assuming that every bit of that mileage was accurate and verified (and it was clear from the errors mentioned during the hearing that the number is high) and assuming that all of it was paid at the rate of forty cents per mile (even though it won't be), the total value of the claim would only be slightly over $9,700, with a corresponding cap on attorney's fee of a little over $2,900 dollars. Thus, the thirty-percent amount awarded will not exceed that.

STATEMENT OF THE DETERMINATION

For the reasons set forth above, Claimant is awarded reimbursement for mileage within the guideline discussed above. Claimant is also awarded an attorney's fee of thirty percent of the value of the award.

IT IS SO ORDERED THIS 29th DAY OF OCTOBER, 2009.

INDUSTRIAL ACCIDENT BOARD

CHRISTOPHER E. BAUM

Mailed Date: 10-30-09

OWC Staff