

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT OFFICE

Kenneth Eric Nordstrom,
Employee/Claimant,

OJCC Case No.: 24-018028KAH

vs.

Accident date: 10/18/2021

Palm Beach County Fire
Rescue/TRISTAR Risk
Management, Inc.
Employer/Carrier/Servicing
Agent.

Judge: Kimberly A. Hill

_____ /

**FINAL COMPENSATION ORDER DETERMINING THE AMOUNT OF
EMPLOYER/SERVICING AGENT PAID ATTORNEY'S FEES AND COSTS**

After due and proper notice, this matter came before the undersigned Judge of Compensation Claims on July 29, 2025, via Zoom, to adjudicate the Employee/Claimant's Verified Motion for Attorney's Fees and Costs per §440.34(1) and (3), Florida Statutes (2021), filed on May 12, 2025. The Employer/Servicing Agent filed a timely Response to the Verified Motion for Attorney's Fees and Costs on June 10, 2025. Kristine Callagy, Esquire, appeared on behalf of the Claimant. Stephen Kaufer, Esquire, appeared on behalf of the Employer/Servicing Agent.

Documentary Evidence:

Judge's Exhibits

1. Notice of Attorney Fee Hearing dated May 13, 2025 [DN 73].
2. Re-notice of Attorney Fee Hearing dated May 27, 2025 [DN 75].

Joint Exhibits:

1. The Claimant's Verified Motion for Attorney's Fees with attachments, including attorney and paralegal time and cost report dated May 12, 2025 [DN 71].

Claimant's Exhibits:

1. Amended Final Compensation Order, dated March 24, 2025 [DN 63].

Employer/Servicing Agent's Exhibits:

1. The Employer/Servicing Agent's Verified Response to the Claimant's Verified Petition for Attorney's Fees and Costs, with attachments dated June 10, 2025 [DN 76].
2. Composite Exhibit - Final Evidentiary Order dated April 29, 2022, Fee Award with OJCC No.: 21-004985 - Tammy Martin v Hillsborough County Sheriff; Final Evidentiary Order dated June 23, 2021, Fee Award with OJCC No.: 16-004831 - Adalberto Rivera, Jr. v. Orange County Sheriff's Office and Johns Eastern Company, Inc. and Final Evidentiary Order dated August 26, 2020, Fee Award with OJCC No.: 18-018606 - Tonnie Rollins v. City of Tallahassee Fire Department and City of Tallahassee.

Witnesses:

Kristine Callagy, Esquire (via Zoom).

Stephen Kaufer, Esquire (via Zoom).

Findings of Fact & Conclusions of Law

In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence. Although I will not cite or summarize each witness's testimony in explicit detail and may not refer to all documentary evidence, I have considered all the evidence submitted and have resolved all conflicts to the extent that conflicts exist. I have jurisdiction over the parties and subject matter.

Kristine Callagy, Esquire, filed a Petition for Benefits on July 24, 2024, seeking various benefits, including compensability under §112.18, Florida Statutes (2021), commonly known as the heart/lung bill. The Employer/Servicing Agent responded to the Petition for Benefits on August 21, 2024, denying the claim in its entirety and raising defenses regarding notice and the statute of limitations.

The parties proceeded to a final hearing on February 18, 2025, which resulted in a March 24, 2025, Amended Compensation Order. This order found that the Claimant's heart disease was compensable under §112.18, Florida Statutes (2021), denied the defenses related to notice and the statute of

limitations, and authorized treatment with a cardiologist. Additionally, it awarded Attorney's Fees and Costs under §440.34, Florida Statutes (2021).

At the time of the final hearing, there was a pending Petition for Benefits, dated November 22, 2024, which was not yet ripe for adjudication. This Petition for Benefits requested impairment benefits, interest penalties, costs, and attorney's fees. The parties resolved the issue of impairment benefits after the undersigned adjudicated the issue of compensability in favor of the Claimant. I accept the parties' stipulation that the total impairment benefits secured, including penalties and interest, amount to \$37,033.17.

The starting point in determining the amount of an attorney's fee award is the statutory formula fee outlined in §440.34(1), Florida Statutes (2021), based on benefits secured. *See Castellanos v. Next Door, Inc.*, 192 So. 3d 431 (Fla. 2016). The JCC should only depart from the statutory formula fee upon a showing of exceptional circumstances, i.e., where the Claimant can demonstrate, based on the standard articulated long ago in *Lee Engineering Constr. Co. v. Fellows*, 209 So. 2d 454, 456 (Fla.1968), that the fee schedule results in an unreasonable fee. As set forth above, the parties agree that the value of benefits secured is \$37,033.17. While the undersigned also awarded a cardiologist, there was no evidence presented of a quantifiable amount of medical benefits secured.

I have determined that the benefits obtained would result in a statutory fee of \$4,453.31. Ms. Callagy claims that she has spent a total of 140.05 reasonable hours, including paralegal time, securing the benefits mentioned. In contrast, Mr. Kaufer asserts that Ms. Callagy's hours should not exceed 123.65 due to his objections regarding the hours claimed. Both parties agree that the statutory fee would yield an unreasonably low hourly rate. My calculations confirm that the hourly fee, based on the parties' assertions, would fall within the range of \$31.80 to \$36.02.

Based on these calculations, my review of the evidence, and the parties' agreement that a guideline fee is insufficient, I find that awarding a statutory guideline fee in this case would be unreasonable and manifestly unfair given the circumstances. Therefore, I conclude that the Claimant is entitled to an hourly fee under *Castellanos*, which mandates consideration of the factors in 4-1.5(b),

Florida Rules of Professional Conduct.¹ The undersigned analyzes the Florida Bar factors as follows:

a. The time and labor required, the novelty, complexity, and difficulty of the questions involved, and skill requisite to perform the legal service properly: Ms. Callagy seeks Employer/Servicing Agent paid attorney's fees based on 140.05 hours (124.05 at \$400.00 per hour in attorney time and 16 at \$125.00 per hour in paralegal time) toward the successful prosecution of the claim for compensability under §112.18, Florida Statutes (2021), which resulted in the Claimant's counsel securing impairment benefits totaling \$37,033.17, and medical treatment with a cardiologist for the Claimant's cardiac condition. In his Verified Response, Mr. Kaufer objected to the reasonableness and relatedness of some of the hours claimed in this matter.

While I accept Ms. Callagy's testimony and the supporting documents as evidence of the reasonableness and necessity of most of the claimed hours, I agree with Mr. Kaufer that there should be some reductions to the hours to account for time spent by Ms. Callagy and her paralegals on administrative tasks, scheduling, duplicative efforts, and hours not directly related to the benefits secured.

As outlined in §57.105, Florida Statutes, clerical time that does not contribute to meaningful support is not recoverable.² See *e.g.*, *Dayco Products v.*

¹ While the parties generally addressed all the factors outlined in 4-1.5(b), Florida Rules of Professional Conduct, they are stated differently in Lee Engineering and previous versions of 440.34, Florida Statutes. The Florida Supreme Court modeled the Lee Engineering factors after the former canon 12 of the Rules of Professional Conduct, which had six factors. In contrast, the present applicable 4-1.5(b), Florida Rules of Professional Conduct has seven factors, as set forth in *Castellanos*. As a matter of reference, the parties should look to 4-1.5(b), Florida Rules of Professional Conduct.

² **57.104 Computation of attorneys' fees.** —In any action in which attorneys' fees are to be determined or awarded by the court, the court shall consider, among other things, time and labor of any legal assistants who contributed nonclerical, meaningful legal support to the matter involved and who are working under the supervision of an attorney. For purposes of this section "legal assistant" means a person, who under the supervision and direction of a licensed attorney engages in legal research, and case development or planning in relation to modifications or initial proceedings, services, processes, or applications; or who prepares or interprets legal documents or selects, compiles, and uses technical information from references such as digests, encyclopedias, or practice manuals and analyzes and follows procedural problems that involve independent decisions.

McLane, 690 So. 2d 654 (Fla. 1st DCA 1997). In *McLane*, the court held that §57.104, Florida Statutes (1991), provides that in any action in which attorney's fees are awarded, the court shall consider the “time and labor of any legal assistants who contributed nonclerical, meaningful legal support to the matter involved.”

I reject Ms. Callagy's testimony regarding the reasonableness, necessity, and nonclerical nature of the hours worked by her and her paralegals. As highlighted in Mr. Kaufer's objections, many of the paralegal time entries include clerical tasks, such as e-filing with the OJCC, conducting telephone conferences with the JCC's support staff and Mr. Kaufer's office, sending scheduling emails and phone calls, leaving voicemail messages for various individuals, and emailing previously billed letters and documents. Additionally, I find that Ms. Callagy performed some specific tasks that a paralegal could have handled.

I overrule Mr. Kaufer's objections regarding the time entries dated January 2, 2025; January 3, 2025; March 24, 2025; and March 25, 2025, which collectively amount to 0.4 hours. However, I uphold and sustain Mr. Kaufer's remaining objections concerning the attorney and paralegal time. As a result, I have adjusted the total awardable hours accordingly.

First, I find that 2.5 hours of Ms. Callagy's time entries pertain to issues or benefits not related to benefits secured, as outlined in Mr. Kaufer's objections. Second, I find that 0.8 hours of Ms. Callagy's time and 0.3 hours of paralegal time are duplicate entries, as noted in Mr. Kaufer's objections. Third, I determine that 0.5 hours of Ms. Callagy's time and 11.9 hours of paralegal time fall under administrative or clerical work, as specified in Mr. Kaufer's objections. Additionally, I have determined that 3.4 hours of Ms. Callagy's time should have been billed as paralegal time, as these hours constitute nonclerical, meaningful legal support that could be billed by a legal assistant/paralegal, as outlined on the last page of Mr. Kaufer's objections.

After considering the testimony of Ms. Callagy and Mr. Kaufer, as well as the documentary evidence provided by both parties and the arguments presented, I conclude that Ms. Callagy reasonably expended a total of 116.85 hours, which reflects a reduction of 7.2 hours of attorney time. Additionally, her paralegals

reasonably expended 7.2 hours, representing a decrease of 12.2 hours in paralegal time while at the same time converting 3.4 hours of claimed attorney time into paralegal time.

The parties disagreed about the time and labor required, the novelty, complexity/difficulty of the questions involved, the skill necessary to perform the services correctly, and whether it was a positive factor. I accept the testimony of Ms. Callagy in this regard, who has dedicated at least ten years to exclusively litigating these types of cases. Also, the Employer/Servicing Agent denied compensability of the claim at least through the pretrial, and didn't accept that the Claimant met the presumption, i.e., establishing causation until the time of the final hearing. Also, I find that this case involved a unique statute of limitations question, albeit based on a factual determination. I accept Ms. Callagy's testimony over that of Mr. Kaufer's that this is a positive factor justifying an increase in fees above the statutory fee.

b. **The likelihood that the acceptance of a particular employment will preclude other employment by the lawyer:** Ms. Callagy asserted that, due to the nature of the case involving a claimant with coronary artery disease, she prioritized it for litigation. She testified that her office generally declines other cases to devote the necessary time and attention to the cases they take on. She mentioned that this urgency could potentially lead to antagonisms with different clients. The Claimant did not present any evidence on this case-specific inquiry that Ms. Callagy or her office turned down any other cases because of this case or that it precluded other employment. Thus, I accept Mr. Kaufer's testimony over Ms. Callagy's in this regard. I also accept Mr. Kaufer's testimony over that of Ms. Callagy's that this is a neutral factor, which does not warrant an increase in the attorney's fees beyond the statutory fee.

c. **The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature.** Ms. Callagy is seeking \$400.00 per hour for her attorney time and \$125.00 for paralegal time. Ms. Callagy testified that the fee customarily charged in the locality for comparable legal services is in the range of \$300.00 - \$400.00 per hour for attorney time and \$75.00 - \$95.00 per hour for paralegal time, citing several orders from the West Palm Beach

District Office. In contrast, Mr. Kaufer stated that he did not conduct any research on the issue but asserted that reasonable rates range from \$275.00 to \$300.00 per hour for attorney time and \$75.00 per hour for paralegal time.

Mr. Kaufer primarily relied on the fact that Ms. Callagy has never been awarded more than \$250.00 per hour in a contested fee case. In rebuttal, Ms. Callagy testified that the orders referenced by Mr. Kaufer are irrelevant as they originate from Orlando, Tampa, and Tallahassee and are several years old. I accept the testimony of Ms. Callagy that the contested fee awards presented by Mr. Kaufer are indeed three to five years old. However, more importantly, the fee awards do not represent the current rate standards in this locality.

I accept Ms. Callagy's testimony regarding the prevailing fees in the West Palm District, which fall between \$300.00 and \$400.00³ per hour for comparable legal services of attorneys and \$75.00 - \$95.00 for similar services of paralegals. Considering the totality of circumstances, I find that a reasonable hourly rate is \$300.00 per hour for attorney time and \$75.00 for paralegal time, which is within the customary fee range for similar legal services in the community, as supported by the testimony of both Ms. Callagy and Mr. Kaufer. I accept Ms. Callagy's testimony over Mr. Kaufer's that this is a positive factor justifying an increase in fees above the statutory fee.

d. **The significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained.** The parties agreed that Ms. Callagy secured compensability, authorization for a cardiologist, and payment of \$37,033.17 in impairment benefits, including penalties and interest. However, they disagreed on whether this should be considered a positive factor. The Claimant argued that the award of medical benefits in this case could result in the Employer/Servicing Agent paying out tens of thousands of dollars in future medical expenses. In contrast, Mr. Kaufer contended that the Claimant is stable and described Ms. Callagy's arguments regarding the value of future medical expenses as speculative.

³ I note that Judge Johnsen's recent fee award of \$400.00 per hour pertains to an appellate fee.

I agree with the Employer/Servicing Agent that this factor focuses on the amount involved in the controversy, not unsupported speculative future benefits. The term "benefits secured," which is all that I can consider in awarding an attorney's fee, does not include future medical benefits to be provided on any date more than 5 years after the date the claim is filed, per section 440.34, Florida Statutes. Nevertheless, I accept Ms. Callagy's testimony over that of Mr. Kaufer that securing compensability, medical treatment, and significant impairment benefits is a positive factor justifying an increase in fees above the statutory fee.

e. The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client. The parties did not separately address this factor, but they covered it under factor (b). Mr. Kaufer testified that the Claimant had experienced a heart attack several years prior, and by the time he filed a Petition for Benefits, his heart condition had stabilized. I find that there is no evidence indicating any specific time limitations imposed by the client or circumstances beyond the standard statutory requirements. I accept Mr. Kaufer's testimony over that of Ms. Callagy's that this is a neutral factor, which does not warrant an increase in the attorney's fees beyond the statutory fee.

f. The nature and length of the relationship with the client. Ms. Callagy stated in her affidavit that she had represented the client for one year and believes that this representation will likely continue for many years. The parties agreed on the nature and length of the professional relationship but disagreed on whether this was a positive factor. I accept Ms. Callagy's testimony over that of Mr. Kaufer's that this is a positive factor justifying an increase in fees above the statutory fee.

g. The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services: Ms. Callagy stated that her practice has focused on first responder litigation under Chapter 112 and the Florida Workers' Compensation Law for the past ten years, and that she

has litigated many first responder cases. Mr. Kaufer acknowledged Ms. Callagy's qualifications but disagreed with her on whether it is a positive factor. The testimony reflects that Ms. Callagy is not Board Certified in Workers' Compensation Law, but she does handle a niche aspect of the law and has litigated many cases. I accept Ms. Callagy's testimony over that of Mr. Kaufer's that this is a positive factor justifying an increase in fees above the statutory fee.

h. **Whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.** The parties agreed that this is a contingency fee case but disagreed on whether this is a positive factor. Mr. Kaufer contends that it is not unique when representing injured workers. While this is an accurate statement, I nevertheless accept Ms. Callagy's testimony that she would not have received payment for her work without her success in the litigation because her contract was a contingency fee contract. Thus, I accept Ms. Callagy's testimony over that of Mr. Kaufer's that this is a positive factor justifying an increase in fees above the statutory fee.

CONCLUSION

After considering all documentary evidence and the live testimony of Ms. Callagy and Mr. Kaufer, particularly concerning each of the enumerated factors, as well as arguments of counsel, I have concluded that the statutory fee is unreasonable and that exceptional circumstances warrant a move to an hourly rate. There are six positive factors and two neutral factors.

I find that Ms. Callagy reasonably expended 116.85 hours of attorney time and 7.2 hours of paralegal time, after accounting for some reductions previously mentioned, in successfully securing benefits for her client. Considering the totality of the evidence, testimony, and arguments presented, I conclude that a reasonable hourly rate for the work performed, and the benefits secured in this matter is \$300.00 per hour, which amounts to \$35,055.00 for the allowed attorney time. Additionally, I conclude that a reasonable hourly rate for the work performed by paralegals in this case is \$75.00 per hour, which amounts to \$540.00 for the allowed paralegal time.

CLAIM FOR COSTS

The Employer/Servicing Agent did not dispute the Claimant's costs as outlined in the Verified Motion for \$2,956.24. I have reviewed the costs and agree that they are reasonable, taxable costs.

WHEREFORE, it is ORDERED and ADJUDGED:

1. The Employer/Servicing Agent shall pay the Claimant's counsel the sum of **\$35,595.00** for attorney's fees, which includes \$35,055.00 in attorney time and \$540.00 in paralegal time.
2. The Employer/Servicing Agent shall pay costs of **\$2,956.24**.

DONE AND SERVED this 2nd day of August 2025, in West Palm Beach, Palm Beach County, Florida.

Kimberly A. Hill

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