

From: Don Drinko
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Gallagher Sharp Shop Talk: Workers' Compensation

Question: What "expenses" are reimbursable to a claimant after a favorable trial verdict under Ohio Rev. Code § 4123.512(F)?

Ohio Rev. Code § 4123.512(F) permits reimbursement of "the cost of any legal proceedings" where the claimant is successful in obtaining a verdict that he/she is entitled to participate in the workers' compensation fund. Recently, the Ohio Court of Appeals, Second Appellate District, was presented with the question of what costs and fees can be included in that reimbursement.

Bland v. Ryan, 2012-Ohio-3176, involved a claimant who obtained a jury verdict entitling her to participate in the workers' compensation claim, find after the verdict, the claimant's attorney filed a motion to be awarded statutory attorney's fees, as well as reimbursement of \$5,330.92 in expenses. These expenses included \$628.25 for photocopies, postage, fax, mileage, and lunch during trial. In ruling on the motion, the trial court awarded \$4,789.80 in expenses, but rejected \$541.12 in ancillary expenses including items such as facsimile costs, packaging, and meals. The trial court's order prompted an appeal by the claimant.

The Second District reversed and remanded the case for additional consideration of the expenses, finding that the trial court abused its discretion in failing to follow established procedures for considering the expenses documented by the claimant. The purpose of R.C. 4123.512 is to minimize the actual expense incurred by an injured employee to establish her right to participate in the Fund. While "everyday costs of doing business" are not reimbursable, the Court concluded that costs that are traditionally charged to clients and which have a proportionally serious impact on a claimant's award are reimbursable. The Court cited an established three-prong analysis to determine whether the expenses is reimbursable: (1) whether the expense is of the type or category for which reimbursement is authorized, as opposed to overhead; (2) whether those costs are actually and directly related to the claimant's appeal; and (3) whether the amount requested was reasonable. The Court found that in *Bland*, most of the expenses were not overhead and were related to the appeal. However, since the trial court never determined whether the expenses were reasonable, the Court reversed and remanded the case to the trial court to make that determination.

The *Bland* decision is a great reminder that consideration must be given to more than just the cost of the compensable condition or claim. While statutory attorney's fees remain capped at \$4,200 by statute, it is not unusual for expenses to approach or even exceed that amount. If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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