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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1100-21**

CARMEN GARZON,

Petitioner-Respondent,

v.

MORRIS COUNTY GOLF CLUB,

Respondent-Appellant.

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Submitted October 12, 2022 – Decided December 23, 2022

Before Judges Messano and Gummer.

On appeal from the Division of Workers' Compensation, Department of Labor and Workforce Development, Claim Petition No. 2017-4875.

Rawle & Henderson LLP, attorneys for appellant (Delia A. Clark, on the briefs).

Victor B. Matthews, attorney for respondent.

PER CURIAM

In this workers' compensation appeal, Morris County Golf Club (the Club) challenges the attorney's fee awards set forth in an October 28, 2021 order for

payment. The Club contends the judge of compensation abused his discretion in issuing excessive and unsupported fee awards. We agree and, accordingly, reverse and remand.

## I.

Petitioner worked for the Club for three years, preparing and serving food. On December 15, 2016, she tripped over a box in the kitchen, injuring her neck, back, and left hand. The Club provided petitioner with temporary disability benefits from the day after the accident until December 29, 2016, when she went to Colombia for a two-week vacation. The Club did not provide temporary disability benefits to petitioner from December 29, 2016, through January 24, 2017, because "she was out of work for a personal vacation, unrelated to her work injury." The Club resumed the payments as of January 25, 2017.

In a January 26, 2017 letter, an adjuster of the Club's insurance carrier questioned petitioner's treating physician, Dr. Joseph P. Fodero, on how he could have extended his disability finding regarding petitioner when petitioner had left the country on vacation, thereby delaying any treatment she could have had during that time. The adjuster asked him to reconsider his position. Dr. Fodero responded that petitioner's vacation "had no bearing on her care" or on his recommendation, noting petitioner already had "swelling" and the Club was

currently closed and unable to offer petitioner light-duty work. He suggested the adjuster was "more concerned with the fact that you would need to pay [petitioner] for the time lost, than with her treatment and well being." In a February 15, 2017 letter, the adjuster advised petitioner that Dr. Fodero was no longer authorized to treat her and that she had to seek treatment from another medical practice identified in the letter.

On February 22, 2017, petitioner filed with the Division of Workers' Compensation a claim petition based on the injuries she had suffered in the fall. In its answer, the Club denied petitioner's injuries had arisen out of and in the course of employment and denied "the nature, extent, causal relationship, and permanency of the alleged injuries."

On February 27, 2017, petitioner moved to compel the Club to pay her temporary compensation and for medical treatment of her hand. She included in her motion the adjuster's January 26, 2017 letter to Dr. Fodero. In response to the motion, the Club contended petitioner was not entitled to temporary disability benefits from December 29, 2016, through January 24, 2017, or the requested medical treatment. The Club asserted she had been "released to return to light duty work with no use of the left hand" on February 27, 2017, and had continued to receive authorized medical treatment.

On March 28, 2017, the judge of compensation began a hearing on petitioner's motion. At the beginning of the hearing, the Club admitted petitioner had suffered a work-related injury, thereby amending its answer to the claim petition. Petitioner's counsel conceded petitioner had been receiving care from a medical practice group authorized in the adjuster's February 15, 2017 letter. Petitioner's counsel stated he "wanted to be able to present proofs on petitioner's argument on fees."

During the hearing, petitioner testified Dr. Fodero had not recommended she start physical therapy before she traveled to Colombia, had approved of her travel plans, and had not discussed any treatment she would need while she was away. She also testified the Club was closed from December 24, 2016, to March 4, 2017, and that she did not expect to receive wages while she was on vacation because the Club was closed. She confirmed the temporary disability payments had resumed on February 20 or 21, 2017, before she filed her claim petition and motion.

At the end of the first day of the hearing, the judge stated he was "extremely disturbed" by the adjuster's January 26, 2017 letter and "really rather bothered when an adjuster asks the medical professional to reconsider his medical opinion, and his opinion with regard to treatment." The judge described

the adjuster as "playing doctor" and considered her actions "completely inappropriate . . . ."

Before the hearing resumed, the parties resolved the issues presented in petitioner's motion. The parties agreed the Club would pay petitioner temporary disability benefits for the period December 29, 2016, to January 24, 2017, and would continue to authorize recommended treatment. The parties also agreed petitioner's counsel-fee application would be "deferred until the conclusion of the case." The judge approved the settlement in an April 17, 2017 order. On April 21, 2017, petitioner received a payment of \$1,880.84 for the December 29, 2016 to January 24, 2017 period.

In a note dated August 23, 2018, petitioner's treating physician imposed specified "permanent" work restrictions. Because the work restrictions were "permanent," the Club immediately discontinued the temporary disability payments. According to the Club, after a December 17, 2018 conference before a new judge assigned to the case, the Club agreed to reinstate the temporary disability payments.

The Club apparently did not immediately restore the payments. On January 25, 2019, petitioner moved to enforce the April 17, 2017 order, seeking reinstatement of the temporary disability payments. The Club did not oppose

the motion. It resumed making temporary disability payments as of March 1, 2019. On March 25, 2019, the Club paid petitioner \$5,564.17 in past due benefits. In a June 3, 2019 compliance order, the judge confirmed the Club was "providing temporary compensation benefits" and that the "[i]ssue of fees [and] penalties on motion [would] be determined at [the] conclusion of case."

The trial began on August 9, 2021. The sole issue to be tried was "the nature and extent of permanent disability." The judge confirmed he would "deal with any fees or penalties . . . at a later date." After petitioner testified and before the trial resumed for a second day, the parties reached a resolution regarding permanency.

Petitioner's counsel submitted an affidavit and supplemental affidavit in support of petitioner's counsel-fee application. Counsel did not include in his submissions an invoice detailing the work he had performed on the case. Instead, he attached to the supplemental affidavit a document entitled "[t]ime expended relating to temporary disability issue" that contained general descriptions of twenty-five hours he had spent on the case in 2017, 2018, and 2019. In the supplemental affidavit, counsel stated "I have expended 25 hours on this matter" and asserted "if my legal time were calculated on an hourly rate,

I would be entitled to \$500 per hour." The Club's counsel submitted an affidavit in opposition to the application.

On October 19, 2021, the judge issued an order approving the parties' settlement of the permanency issue, granting a permanent disability award of \$164,577. The judge also heard argument and rendered a decision on the record regarding petitioner's fee application and the assessment of penalties on the Club. Petitioner's counsel requested "a fair and reasonable attorney's fee for [his] efforts, but more importantly, the fee imposition to teach this respondent their conduct cannot be tolerated . . . ." Regarding the permanency award, the judge granted petitioner counsel fees of \$32,915, equal to twenty percent of the award, and assessed the entire fee award on the Club because "it has been a struggle for [petitioner] the entire time right up until the commencement of the trial to get the protection that she's entitled to under the law under the Worker's Compensation statute."

In connection with petitioner's 2017 motion to compel, the judge faulted the Club for its adjuster's correspondence, for not seeking the court's assistance, and for engaging in "self-help" when it suspended petitioner's temporary disability benefits following her trip to Colombia. He held petitioner was entitled to "a penalty for the wrongful withholding of the temporary benefits"

equal to twenty-five percent of the amount of the withheld benefits, pursuant to N.J.S.A. 34:15-28.2. Instead of basing the penalty on the actual amount withheld, \$1,880.84, for the period of December 29, 2016, to January 24, 2017, the judge apparently assumed petitioner had not been paid for four full weeks, which would have been \$2,194.32, and awarded a penalty of \$548.58. Petitioner's counsel represented the Club had paid \$61,008.33 in temporary disability benefits and \$329,172 in medical benefits after he filed the motion to compel. The judge approximated the total amount to be \$390,000 and awarded petitioner twenty percent of that amount in counsel fees for the motion to compel, or \$78,000.

In connection with the 2019 motion to enforce, the judge found the Club again had engaged in wrongful "self-help" when it stopped paying petitioner temporary disability benefits in August 2018. The judge assessed a penalty equal to twenty-five percent of the amount of the \$5,564.17 in withheld benefits, or \$1,391.04. As for counsel fees in connection with the motion to enforce, the judge stated he had reviewed the "spreadsheet" petitioner's counsel had attached to his supplemental affidavit, found twenty-five hours "that was expended to prepare the motion to enforce and to appear in court and conference the matter

with the court to be a reasonable amount of time," concluded \$500 was a "very reasonable" hourly fee, and awarded \$12,500 in counsel fees.

The judge also assessed an additional penalty of \$5,000, to be divided equally and imposed as to the motions to compel and to enforce, and to be paid into the Second Injury Fund pursuant to N.J.S.A. 34:15-28.2(b). The judge stated that penalty was appropriate because of the "reckless conduct in the way [the Club] treated this petitioner and unilaterally worked to deny the petitioner the benefits the petitioner was entitled to under the statute." The judge required the Club to pay all transcript and translator costs. On October 28, 2021, the judge issued an "order of payment" memorializing his decision.

In this appeal, the Club contends the counsel fee awards in the October 28, 2021 order were excessive, arbitrary, and abuses of discretion. The Club seeks a remand directing the judge to conduct a "reassessment and apportionment of counsel fees."<sup>1</sup> The Club argues the judge based the fee award on petitioner's permanency claim on only a "hyperbolic characterization of [the Club's] actions" and failed to provide a rational basis for requiring the Club to

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<sup>1</sup> The Club apparently does not seek a reversal of the aspect of the order imposing penalties. Accordingly, we do not address that issue. See Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) (holding "[a]n issue not briefed on appeal is deemed waived").

pay in counsel fees the full statutory twenty percent of the permanency award. The Club also faults the judge for failing to consider that the Club had paid benefits immediately after the accident and throughout most of the pendency of the case. The Club contends the fee awards relating to petitioner's motions were "excessive and manifestly unfair when a full assessment is performed to all the actions of [the Club] during the pendency of the [case] and consideration of the 'alleged' error committed by [the Club]." We agree and, therefore, reverse and remand for further proceedings.

## II.

"Our review of decisions from the workers' compensation court are decidedly deferential" in recognition of "'the compensation court's expertise and the valuable opportunity it has had in hearing live testimony.'" Ripp v. Cnty. of Hudson, 472 N.J. Super. 600, 606 (App. Div. 2022) (quoting Hager v. M&K Constr., 246 N.J. 1, 18 (2021)). Accordingly, our review in workers' compensation cases is generally "limited to whether the findings made could have been reached on sufficient credible evidence present in the record." Hersh v. Cnty. of Morris, 217 N.J. 236, 242 (2014) (quoting Sager v. O.A. Peterson Constr., Co., 182 N.J. 156, 164 (2004)). However, we reverse a compensation judge's findings if "they are 'manifestly unsupported by or inconsistent with

competent relevant and reasonably credible evidence as to offend the interests of justice.'" McGory v. SLS Landscaping, 463 N.J. Super. 437, 452-53 (App. Div. 2020) (quoting Perez v. Monmouth Cable Vision, 278 N.J. Super. 275, 282 (App. Div. 1994)). We owe no deference to a compensation judge's legal conclusions or statutory construction and, consequently, review those issues de novo. Hager, 246 N.J. at 13.

We review a trial court's fee determinations "with deference and will disturb them 'only on the rarest occasions, and then only because of a clear abuse of discretion.'" DeSanctis v. Borough of Belmar, 455 N.J. Super. 316, 335 (App. Div. 2018) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)). "An abuse of discretion occurs when a decision was 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Wear v. Selective Ins. Co., 455 N.J. Super. 440, 459 (App. Div. 2018) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)). "Reversal is warranted when 'the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amount[ed] to a clear error in judgment.'" Ferolito v. Park Hill Ass'n, 408 N.J. Super. 401, 407 (App. Div. 2009) (quoting Masone v. Levine, 382 N.J.

Super. 181, 193 (App. Div. 2005)). Guided by these standards, we are satisfied the judge's fee awards cannot stand.

"A prevailing party can recover counsel fees if expressly allowed by statute, court rule, or contract." Empower Our Neighborhoods v. Guadagno, 453 N.J. Super 565, 579 (App. Div. 2018); see also R. 4:42-9(a). Workers' compensation statutes provide for counsel fee awards. N.J.S.A. 34:15-64(a) authorizes a judge of compensation to "allow to the party in whose favor judgment is entered . . . a reasonable attorney fee, not exceeding 20% of the judgment." As we held in Quereshi v. Cintas Corp., 413 N.J. Super. 492, 500 (App. Div. 2010), "[a]n attorney for a petitioner can anticipate up to 20%, but may receive less, if the judge of compensation finds an award less than 20% is reasonable. Stated differently, the judge of compensation has the discretion to award a reasonable fee up to 20% of the judgment." See also Collas v. Raritan River Garage, Inc., 460 N.J. Super. 279, 283 (App. Div. 2019) (recognizing a compensation judge may award a reasonable attorney fee not to exceed twenty percent of the judgment).

In addition, if a party "unreasonably or negligently delays or refuses to pay temporary disability compensation," a compensation judge must award the petitioner "any reasonable legal fees incurred by the petitioner as a result of and

in relation to such delays or refusals." N.J.S.A. 34:15-28.1; see also Quereshi, 413 N.J. Super. at 500 (holding a compensation judge must award a petitioner who moves pursuant to N.J.S.A. 34:15-28.1 to compel payment of temporary disability benefits "reasonable legal fees incurred" in bringing the motion). If a party "fails to comply with any order of a judge of compensation or with the requirements of any statute or regulation regarding workers' compensation," a compensation judge may award "reasonable legal fees, to enforce the order, statute, or regulation." N.J.S.A. 34:15-28.2; see also N.J.A.C. 12:235-3.16 (h)(6) ("Upon a finding by a judge of noncompliance with a court order or the workers' compensation statute or rules, the judge . . . may . . . [a]llow a reasonable counsel fee to a prevailing party, where supported by an affidavit of services").

Generally, "fees awarded by courts, regardless of their basis, are governed by principles of reasonableness." Walker v. Giuffre, 209 N.J. 124, 130 (2012). In particular, in each statute applicable in this case, the Legislature expressly required that attorney's fees awarded by a compensation judge be "reasonable." N.J.S.A. 34:15-28.1, -28.2, and -64. Thus, a compensation judge's authority in awarding counsel fees "is not unbridled; it is limited by the requirement of N.J.S.A. 34:15-64 that the fee awarded be 'reasonable.'"

Barbarevech v. Johns-Manville Prods. Corp., 143 N.J. Super. 31, 34 (App. Div. 1976); see also Collas, 460 N.J. Super. at 284 (holding "[a] judge of compensation, subject to the twenty-percent cap, may adjust a fee award and the proportional allocation thereof depending on the judge's assessment of reasonableness").

A judge's "first step in awarding a reasonable amount of attorney's fees is determining the lodestar, 'which equals 'the number of hours reasonably expended multiplied by a reasonable hourly rate.'"" Jacobs v. Mark Lindsay & Son Plumbing & Heating, Inc., 458 N.J. Super. 194, 209 (App. Div. 2019) (quoting Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004) (quoting Rendine, 141 N.J. at 335)). Thus, to determine the lodestar, the judge must consider the reasonableness of both the attorney's rate and the number of hours the attorney expended on the case. Jacobs, 458 N.J. Super. at 209-10; see also Rendine, 141 N.J. at 335-37.

[T]he trial court's determination of the lodestar amount is the most significant element in the award of a reasonable fee because that function requires the trial court to evaluate carefully and critically the aggregate hours and specific hourly rates advanced by counsel for the prevailing party to support the fee application. Trial courts should not accept passively the submissions of counsel to support the lodestar amount[.]

[Rendine, 141 N.J. at 335.]

Those guiding principles apply equally in workers' compensation cases.

"[W]hen a petitioner's attorney requests a substantial fee, albeit not in excess of the allowed 20%, the fee request must be supported by an affidavit of services that demonstrates the extent of the attorney's efforts, including the time expended and 'the extent of his expertise and experience . . . ." Quereshi, 413 N.J. Super. at 500 (quoting Gromack v. Johns-Manville Prods. Corp., 147 N.J. Super. 131, 136 (App. Div. 1977)); see also Barbarevech, 143 N.J. Super. at 34 (holding a "petitioner's attorney has the burden of demonstrating the extent of his efforts, including the time actually spent in rendering services" and that "[s]uch proofs shall be by affidavit or other testimony . . . .").

We have "caution[ed] against a reflexive application of a twenty-percent award without full analysis." Collas, 460 N.J. Super. at 285. "Although the amount of the award is a factor to be considered in fixing the fee, it has 'limited significance; the more important factors are the nature and extent of the services and the responsibility involved.'" Barbarevech, 143 N.J. Super. at 34 (quoting Del Peso v. H.A. Bar & Rest. Co., 75 N.J. Super. 108, 122-23 (App. Div. 1962)). Because the compensation judge did not heed that caution and abused his discretion by failing to follow applicable statutory and case law regarding awarding counsel fees, we reverse.

In awarding petitioner attorney fees equal to twenty percent of the permanent disability award, the compensation judge did exactly what we have cautioned against: he engaged in a "reflexive application" of the twenty-percent maximum set forth in N.J.S.A. 34:15-64(a) and failed to make a "full analysis" of petitioner's fee submission. Collas, 460 N.J. Super. at 285. He failed to make the critical determination of what the lodestar was and whether the number of hours petitioner's counsel asserted he had spent on the case was reasonable. He did not engage in a reasonableness analysis; he just by rote did the math, applying twenty percent to the permanent disability award. In doing so, he failed to follow applicable law. Accordingly, we reverse and vacate the attorney fee award of \$32,915 in connection with the permanency award.

The judge did the same thing regarding the fee award for the 2017 motion to compel. The judge held "under the statute, petitioner's attorney can receive a fee of up to 20 percent of the benefits obtained through the motion," accepted without analysis petitioner's counsel's representation that "\$390,000 is the amount of benefits and treatment that was provided after the motion was filed," and awarded twenty percent of that figure, or \$78,000.<sup>2</sup> That legal conclusion

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<sup>2</sup> Even if the judge stated the law accurately, and he didn't, \$390,000 was not the amount of benefits obtained through the motion. The Club already had

was incorrect. In N.J.S.A. 34:15-28.1, which is the applicable statute for an award of fees in connection with a motion regarding a delay or refusal to pay temporary disability benefits, the Legislature said nothing about awarding fees equal to twenty percent of the benefits obtained through the motion. Instead, the Legislature clearly provided for an award of "any reasonable legal fees incurred by the petitioner as a result of and in relation to such delays or refusals." N.J.S.A. 34:15-28.1; see also Quereshi, 413 N.J. Super. at 500 (holding the required fee award under N.J.S.A. 34:15-28.1 for a motion to compel payment of temporary disability benefits is the "reasonable legal fees incurred" in bringing the motion). Thus, the basis of a fee award under N.J.S.A. 34:15-28.1 is not the amount of benefits obtained through the motion, as the judge incorrectly held, but the "reasonable legal fees incurred" in bringing the motion. See N.J.S.A. 34:15-28.1. By simply doing the twenty percent math, the judge did not follow statutory law and did not give any consideration as to what legal fees were actually incurred in bringing the motion and whether those fees were

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resumed paying temporary disability benefits before petitioner filed the claim petition and motion to compel. As a result of the motion, petitioner received a payment of \$1,880.84, which was equal to the temporary disability benefits the Club previously had withheld for the December 29, 2016 to January 24, 2017 period in connection with petitioner's Colombia trip.

"reasonable." N.J.S.A. 34:15-28.1. Accordingly, we reverse and vacate the \$78,000 fee award for the motion to compel.

For the 2019 motion to enforce, the judge issued a fee award based on petitioner's counsel's suggested hourly rate and the total number of hours of work set forth in the "[t]ime expended relating to temporary disability issue" document petitioner's counsel submitted. The judge engaged in no analysis as to what that minimally-descriptive document meant or whether the number of hours stated were reasonable. He simply multiplied the hourly rate by the number of stated hours and awarded \$12,500. An analysis of the information provided in that unsworn document was critical. The document's title suggests that the hours set forth in the document related to the "temporary disability issue," with entries for a total of twenty-five hours of work performed in 2017, 2018, and 2019. Yet, in his supplemental affidavit, counsel attested he had spent a total of twenty-five hours "on this matter."<sup>3</sup> By awarding petitioner a fee for the 2019 motion based on all of those twenty-five hours, the judge clearly was not awarding "reasonable legal fees" incurred "to enforce the order." N.J.S.A.

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<sup>3</sup> If petitioner's counsel correctly certified that he had spent twenty-five hours "on this matter," by awarding \$32,915 plus \$78,000 plus \$12,500, the judge awarded more than the legal fees actually incurred in counsel's entire representation of petitioner's interests.

34:15-28.2(a). See Ripp, 472 N.J. Super. at 609 (holding the statute "justifies imposition of a penalty," including attorney's fees, "only to 'enforce the order' of the [court], and only if there is an 'unreasonable payment delay' of the 'moneys due'" (quoting N.J.S.A. 34:15-12.2(a))). Accordingly, we reverse and vacate the \$12,500 fee award for the motion to enforce.

We remand the case for a determination of reasonable counsel fee awards based on the applicable statutory and case law and an appropriate consideration of the circumstances of this case. We direct that the case be sent to a different compensation judge. For the permanency fee award, the newly-assigned compensation judge must determine the lodestar and the reasonable amount of fees based on that lodestar and cannot issue an award in excess of the twenty-percent statutory cap. For the awards related to the motions, the judge must determine the reasonable fees actually incurred in bringing the motions. And in issuing the awards, the judge must consider the circumstances of this case. The compensation judge who awarded \$123,415 in this case, allocating all of it to the Club, appeared to attempt to impose what he thought was the maximum allowable fee under his incorrect understanding of the law. Here, the Club paid benefits immediately after the accident, agreed to limit what ultimately had to be tried, and interrupted benefit payments based only on petitioner's trip to

Colombia and on information that her treating physician had imposed permanent work restrictions. Those circumstances do not bespeak a maximum award.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION