

CHAPTER 112

AN ACT concerning witness fees in workers' compensation cases and amending R.S.34:15-64.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.34:15-64 is amended to read as follows:

Rules, regulations; fees for witnesses, attorneys.

34:15-64. a. The commissioner, director and the judges of compensation may make such rules and regulations for the conduct of the hearing not inconsistent with the provisions of this chapter as may, in the commissioner's judgment, be necessary. The official conducting any hearing under this chapter may allow to the party in whose favor judgment is entered, costs of witness fees and a reasonable attorney fee, not exceeding 20% of the judgment; and a reasonable fee not exceeding \$400 for any one witness, except that the following fees may be allowed for a medical witness:

(1) (a) A fee of not more than \$400 paid to an evaluating physician for an opinion regarding the need for medical treatment or for an estimation of permanent disability, if the physician provides the opinion or estimation in a written report; and

(b) An additional fee of not more than \$400 paid to the evaluating physician who makes a court appearance to give testimony; or

(2) (a) A fee of not more than \$450 paid to a treating physician for the preparation and submission of a report including the entire record of treatment, medical history, opinions regarding diagnosis, prognosis, causal relationships between the treated condition and the claim, the claimant's ability to return to work with or without restrictions, what, if any, restrictions are appropriate, and the anticipated date of return to work, and any recommendations for further treatment; and

(b) (I) An additional fee of not more than \$300 per hour, with the total amount not to exceed \$2,500, paid to the treating physician who gives testimony concerning causal relationship, ability to work or the need for treatment; or

(ii) An additional fee of not more than \$300 per hour, with the total amount not to exceed \$1,500, paid to the treating physician who gives a deposition concerning causal relationship, ability to work or the need for treatment.

b. (1) No fee for an evaluating physician pursuant to this section shall be contingent on whether a judgment or award is or is not made in favor of the petitioner.

(2) No evaluating or treating physician shall charge any fee for a report, testimony or deposition in excess of the amount permitted pursuant to the provisions of this section.

c. A fee shall be allowed at the discretion of the judge of compensation when, in the official's judgment, the services of an attorney and medical witnesses are necessary for the proper presentation of the case. In determining a reasonable fee for medical witnesses, the official shall consider (1) the time, personnel, and other cost factors required to conduct the examination; (2) the extent, adequacy and completeness of the medical evaluation; (3) the objective measurement of bodily function and the avoidance of the use of subjective complaints; and (4) the necessity of a court appearance of the medical witness. When, however, at a reasonable time, prior to any hearing compensation has been offered and the amount then due has been tendered in good faith or paid within 26 weeks from the date of the notification to the employer of an accident or an occupational disease or the employee's final active medical treatment or within 26 weeks after the employee's return to work whichever is later or within 26 weeks after employer's notification of the employee's death, the reasonable allowance for attorney fee shall be based upon only that part of the judgment or award in excess of the amount of compensation, theretofore offered, tendered in good faith or paid. When the amount of the judgment, or when that part of the judgment or award in excess of compensation, offered, tendered in good faith or paid as aforesaid, is less than \$200, an attorney fee may be allowed not in excess of \$50.

d. All counsel fees of claimants' attorneys for services performed in matters before the Division of Workers' Compensation, whether or not allowed as part of a judgment, shall be first approved by the judge of compensation before payment. Whenever a judgment or award is made in favor of a petitioner, the judges of compensation or referees of formal hearings shall direct amounts to be deducted for the petitioner's expenses and to be paid directly to the persons entitled to the same, the remainder to be paid directly to the petitioner.

2. This act shall take effect immediately.

Approved December 11, 2002.