

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-1788

JOSEPH GUERRERA,

Appellant,

v.

BECTON DICKINSON & CO. and
SEDGWICK CMS,

Appellees.

On appeal from an order of the Office of the Judges of
Compensation Claims.
Mark A. Massey, Judge.

Date of Accident: March 6, 2018.

May 4, 2022

PER CURIAM.

In this workers' compensation case, Claimant, who has a compensable injury, challenges an order of the Judge of Compensation Claims denying Claimant's verified petition for attorney's fees. We affirm without comment the denial of fees on penalties and interest on impairment benefits, but reverse, for the reasons below, the denial of fees on the increase in average weekly wage (AWW).

Employer/Carrier-paid (E/C-paid) attorney's fees must be based on "benefits secured by the attorney." § 440.34(2), Fla. Stat. (2017). Here, the JCC denied E/C-paid fee entitlement on an increase in Claimant's AWW, finding that "no actual or real benefit was secured." We find reversible error because, even though Claimant had received disability benefits since the date of accident at the maximum compensation rate, the AWW adjustment increased the 80% "threshold" for temporary partial disability (TPD) entitlement. See § 440.15(4)(c), Fla. Stat. (2017) (providing for entitlement to TPD when an injured worker "returns to work with the restrictions resulting from the accident and is earning wages less than 80 percent of the preinjury average weekly wage"). Additionally, the AWW adjustment could also affect potential offsets if Claimant receives federal disability benefits. See § 440.15(9)(a), Fla. Stat. (2017).

The JCC also denied fee entitlement for securing this AWW increase on grounds the increase was smaller than what Claimant had sought. But the law does not require an exact match between the claim and the award. *Cf. Stromas v. Champion Int'l*, 828 So. 2d 495, 496 (Fla. 1st DCA 2002) (noting, in reversing denial of attorney's fees, the court's disapproval of "the hyper-technical effort by the employer/carrier and judge of compensation claims to distinguish the psychological therapy, which was ultimately authorized, from the authorization of a psychiatrist sought by claimant"). On the contrary, the statutory fee schedule set forth in section 440.34(1), Florida Statutes, bases the fee calculation on the value of the award, which implies that the size of the increase goes only to fee amount, not fee entitlement.*

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings in accordance with this opinion.

LEWIS, BILBREY, and JAY, JJ., concur.

* Section 440.34(1) also provides for an alternative "reasonable" fee if certain circumstances exist. See *Castellanos v. Next Door Co.*, 192 So. 3d 431 (Fla. 2016).

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Kevin R. Gallagher of Gallagher Law Group, P.A., Fort Lauderdale, for Appellant.

Thomas P. Vecchio of Vecchio, Carrier, Feldman & Johannessen, P.A., Lakeland, for Appellees.