

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS

Board No.: 004308-04

Nancy Packard
Swix Sport USA, Inc.
Chubb Group Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges Horan, Costigan and Fabricant)

The case was heard by Administrative Judge Bean

APPEARANCES

Teresa Brooks Benoit, Esq., for the employee at hearing
Charles E. Berg, Esq., for the employee at hearing
James N. Ellis, Esq., and Charles E. Berg, Esq., for Ellis & Associates on appeal
Nancy Packard, pro se, on appeal
Shawn F. Mullen, Esq., for the insurer

HORAN, J. In Packard v. Swix Sport USA, Inc., 22 Mass. Workers' Comp. Rep. ____ (November 18, 2008), we affirmed the decision of an administrative judge denying the employee's claim for attorneys' fees and costs, and assessing costs against Ellis & Associates (hereinafter the appellants) for violating § 14(1).¹ We further found the appellants violated § 14(1) by filing and pursuing, without reasonable grounds, an appeal of the judge's hearing decision. Accordingly, we retained jurisdiction of the case for the sole purpose of determining the

¹ General Laws c. 152, § 14(1), provides, in pertinent part:

If any administrative judge or administrative law judge determines that any proceedings have been brought . . . by an employee or counsel without reasonable grounds, the whole cost of the proceedings shall be assessed against the employee or counsel, whomever is responsible.

"supplementary amount due the insurer under § 14(1)" caused by the appellants' frivolous appeal to this board. Id.

We requested that within twenty days of the filing date of our decision in Packard, supra, insurer's counsel submit to this board, and serve upon the appellants, an affidavit of the costs incurred in defense of the appeal. The appellants were granted twenty days to respond in writing to the insurer's submission.

On December 8, 2008, we received the insurer's counsel's affidavit and a record of the time he spent in defense of the appeal. Insurer's counsel provided copies of his submission to the appellants. The appellants failed to file a written response. Our review of the submitted time record reveals a mathematical error in the tabulation of the hours spent in defense of the appeal.² Therefore, pursuant to § 14(1), we assess, and the appellants shall pay to the insurer, costs in the amount of \$3,687.50.

So ordered.

Mark D. Horan
Administrative Law Judge

Patricia A. Costigan
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Filed: January 15, 2009

² The defense costs associated with this appeal were incurred during the period of December 28, 2006, to and including December 4, 2008. For the time period of February 28, 2007, to March 27, 2007, insurer's counsel's time totaled six hours, not eight. Accordingly, 29.5 total hours were spent in defense of the appeal. The billing rate was \$125.00 per hour; we have no reason to question the reasonableness of this rate.