

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

BEVERLY JOHNSON,

Plaintiff,

v.

PRUDENTIAL INSURANCE  
COMPANY OF AMERICA,

Defendant.

---

ORDER

98-C-0750-C

Plaintiff Beverly Johnson has applied for an award of fees, costs and prejudgment interest pursuant to 29 U.S.C. § 1132(g)(1). Defendant Prudential Company disputes the amounts plaintiff is seeking. I conclude that certain adjustments in the three requests are warranted.

Plaintiff wants an award of \$45,057.50 in attorney fees, billed generally at \$150 an hour for Scott Hassett's work and at \$125 for Lisa Pierobon Mays's work. Defendant has no argument with the rates sought but objects to the number of hours spent on certain tasks. I agree with defendant that plaintiff's counsel should not be charging for two lawyers at one deposition, for 40 hours of preparation for oral argument on appeal, for 10 hours of time spent

on the state law claim, on which she did not prevail, and for the extra time necessitated by plaintiff's not filing an itemized fee request at the time she asked for an award of fees. Reducing the total by 20 hours for unnecessary time spent in preparation for oral argument (20 x \$125 an hour = \$2500), by 9.25 hours for duplicate time at depositions (9.25 x \$137.50 (average of rates charged by Hassett and Mays) = \$1272), by 10 hours spent on the state law claim (10 x \$125 an hour = \$1250) and by 5 hours necessitated by the failure to file the itemized fee request with plaintiff's motion for a fee award (5 x \$125 an hour = \$625) reduces the fee award to \$39,410.50.

Plaintiff is asking for reimbursement of \$8681.48 for costs, which include photocopy charges, research fees, telephone charges, deposition charges and "professional services," which appear to be expert witness fees. Defendant is correct in pointing out that plaintiff did not indicate what kinds of documents were copied and the cost for each page that was reproduced. I am prepared to award plaintiff \$.10 a page if she specifies exactly how many pages were copied. It is reasonable to assume that the photocopying was warranted, particularly given the document intensive nature of this litigation.

However, plaintiff is not entitled to reimbursement for expert witness fees because there is no explicit statutory authority for such reimbursement. See Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 439 (1987). This means that \$1225 for professional services

performed by Dr. Moore and \$1868.20 for professional services by Professional Rehabilitation must be deleted. Plaintiff's reimbursable costs are reduced from \$8,681.48 to \$4,757.84. (This figure is subject to a slight upward adjustment if plaintiff can identify the number of photocopies that she needed for this litigation.)

Plaintiff has asked for prejudgment interest in the amount of \$13,35.50 on \$44,532.00 for 36 months at the rate of 9.5%. Defendant agrees that both the interest rate and the time period are accurate but it takes issue with computing the interest due on the full amount of the award for the full 36 months. As defendant notes, the award would not have been made in a lump sum to plaintiff 36 months ago. Rather, the money would have been paid out in monthly increments. Thus, plaintiff is entitled to 36 months of interest on her first monthly payment but only 35 months of interest on her second payment, and so on. I am persuaded that defendant's method is the proper one for calculating interest due. Using that approach, plaintiff would be entitled to \$7,167.17 as of August 22, 2000.

#### ORDER

Pursuant to 29 U.S.C. § 1132(g)(1), IT IS ORDERED that plaintiff Beverly Johnson is awarded \$39,410.50 in attorney fees, \$4,757.84 in costs and prejudgment interest in the

amount of \$7,167.17 as of August 22, 2000.

Entered this 5th day of September, 2000.

BY THE COURT:

BARBARA B. CRABB  
District Judge