

Decided and Entered: March 28, 2013

514236

In the Matter of the Claim of
CATHY BLEAKLEY,
Appellant,

v

VERIZON SERVICES GROUP et al.,
Respondents.

WORKERS' COMPENSATION BOARD,
Respondent.

Decision rendered moot by Board's amended decision to allow award of legal fee even if no money moving at the time of the award.

MEMORANDUM AND ORDER

Calendar Date: February 14, 2013

Before: Peters, P.J., Spain, Garry and Egan Jr., JJ.

Fine, Olin & Anderman, LLP, Albany (Vincent Rossillo of counsel), for appellant.

Stockton, Barker & Mead, LLP, Troy (Sarah L. Merritt of counsel), for Verizon Services Group and another, respondents.

Spain, J.

Appeal from a decision of the Workers' Compensation Board, filed August 1, 2011, which, among other things, denied an application for an award of counsel fees.

Claimant suffered a work-related injury in November 2009 and was out of work from November 23, 2009 until January 11, 2010. Prior to any award of workers' compensation benefits, the employer's workers' compensation carrier began making payments to claimant in the amount of \$600 per week. Additionally, pursuant to its benefit plan, the employer began paying claimant wages in

-2-

514236

lieu of workers' compensation benefits so that claimant was receiving her full salary. In January 2010, claimant applied for workers' compensation benefits and thereafter the employer requested reimbursement for the payments made in lieu of workers' compensation benefits, but only in the event of an award for schedule loss and/or facial disfigurement.

Following a hearing, a Workers' Compensation Law Judge (hereinafter WCLJ) established the claim, awarded benefits and determined that the carrier had reserved the right to reimbursement, contingent on any future schedule loss of use award. The WCLJ also granted claimant \$200 in counsel fees. Upon review, the Workers' Compensation Board modified the WCLJ's determination by rescinding the grant of counsel fees, finding that "since there is no money currently moving to the claimant and no employer reimbursement, there is no source of funds to which an attorney's lien can presently attach." Claimant appeals.

This Court has been informed that the Board issued an amended decision on March 12, 2013. The Board's amended decision has rendered this appeal moot (see Matter of Cucinella v New York City Tr. Auth., 82 AD3d 1453, 1454 [2011]).

Peters, P.J., Garry and Egan Jr., JJ., concur.

ORDERED that the appeal is dismissed, as moot, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court