39-2-5715

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2374-99T2

JAMES MORRIS,

Petitioner-Respondent,

v.

TOWNSHIP OF WASHINGTON,

Respondent-Appellant.

Argued October 11, 2000 - Decided JAN 16 2001

Before Judges Stern and Fall.

On appeal from the Department of Labor, Division of Workers Compensation, Docket No. 96-000603.

Roland R. Formidoni argued the cause for appellant (Lenox, Socey, Wilgus, Formidoni & Casey, attorneys; Mr. Formidoni, on the brief).

M. Scott Tashjy argued the cause for respondent (Hobbie, Corrigan, Bertucio & Tashjy, attorneys; Mr. Tashjy, on the brief).

PER CURIAM

Petitioner was employed as a police officer by the Township of Washington from June 1984 through November 8, 1995. At the end of his first year, he was given the "patrolman of the year award." Prior to the commencement of his job, petitioner had no history of "psychiatric problems or mental distress." He received his law degree while on the force, and is admitted to

the bar in New Jersey and Pennsylvania. Given his years of service, however, petitioner "decided to stay" on the force and intended to continue working as an officer until he could retire and receive his pension.

On Christmas eve or Christmas day of 1985[1] petitioner was dispatched to the scene of a "domestic dispute." When he arrived at the scene, he discovered it was the house of the Chief of Police "and his wife came out the door screaming that the Chief was bleeding heavily, he was trying to kill himself[.]" The Chief "fled the scene in [a] police car," and petitioner and another officer drove around looking for him. When found, the Chief "was drunk," "pushed the other officer on the floor," "hopped in the car and drove off." Subsequently, petitioner's superiors, Lieutenant Woodruff and Sergeant Fiasco, told petitioner that "they knew where the Chief was," and directed petitioner to "delete any reference to [the incident] on any reports." Thereafter, petitioner's good relationship with the Chief changed and became "the complete opposite." Petitioner thereafter filed grievances and legal actions as a result of the treatment he received with respect to various subsequent disputes.

In or around June 1992 Sergeant Ralph Fiasco began following

---

[1]Petitioner said it was "the mid 1980's, early 1980's," but gave no year. Respondent refers to "the second year of his tenure," which seems logical in light of the award given to petitioner in his first year.

petitioner's wife and asking her out. One incident prompted petitioner to file an internal complaint. An investigation was conducted by Detective Petty of the Internal Affairs Division. Petitioner stated that as a result of the investigation, "the strain in the department was unbelievable" because "this whole thing [became] public" before the matter was closed.

Notwithstanding the incidents regarding petitioner's wife, the Chief transferred petitioner to Sergeant Fiasco's squad in 1995. Petitioner "was scared to death" as a result of the transfer. He wrote a letter to the Chief outlining his problems with Fiasco, events following "the sexual harassment towards [his] wife" and requesting a change in assignments. However, no reassignment was made. Petitioner nevertheless decided to remain on the force because he had only five years to go until eligibility for retirement.

While under his command, Fiasco told petitioner he would not "back [him] up on [his] calls," but that it would be the responsibility of the other patrolmen. Petitioner stated that this was "pretty scary" because his back-up person might be "on the other side of the [t]ownship" and he would be left without adequate protection. According to petitioner, this is the first time this "new rule[]" was implemented.

Due to the stress which petitioner attributed to his fear of Sergeant Fiasco, petitioner began to experience physical complications such as "grinding [his] teeth uncontrollabl[y],"

"severe headaches," "shakes" and "stomach ulcer[s]." On November 8, 1995, petitioner was driving in his patrol car in "a daze[d]" state of mind and had a panic attack. As a result, he left his job and did not return. Since then, he has been under psychiatric care.

After leaving the force, petitioner began handling residential real estate closings and practicing law part time out of his home. He received his title agency license and does mostly refinances on a part-time basis. He feels that he does not act "as an attorney," but, rather, "as an agent for the title company."

Dr. Richard Fort, petitioner's treating psychiatrist, sees petitioner once a month after having stabilized him on various medications. Petitioner has had difficulty coping when he tried to go off his medication and has had trouble sleeping. Petitioner explained that prior to being involved with these incidents on the force, he had none of these problems. After petitioner left the force, he was still "scared to death" of Sergeant Fiasco to the point that he would drive in the right lane at 55 mph because he thought Fiasco was following him and would pull him over.

Other officers testified about their experience working under Sergeant Fiasco. Patrolman Brian Mulvan stated that Fiasco "violently threatened" and "har[]assed" him and another officer, Patrolman Boccanfusso, on two occasions. These incidents were

"really upsetting" to Mulvan and caused him "a great deal of anxiety." He became "physically sick from it."

Patrolman Bryan Boccanfusso confirmed the testimony of Mulvan. Fiasco met with Boccanfusso on two occasions during which Fiasco was verbally abusive, and Boccanfusso considered him "extremely hostile." He experienced physical problems, and, at the time of his testimony, was concerned for his physical safety.[2]

Sergeant Dominic Botteri had petitioner under his command on two or three occasions. Botteri testified that petitioner was "a very good police officer" and that he related to the general public very well. Botteri, as petitioner's supervisor, took an Internal Complaint from petitioner when he alleged Fiasco was making advances towards his wife. Botteri stated that he was aware petitioner was rotated to Fiasco's shift and found it "unusual" in the light of the complaint regarding his wife. Botteri was also aware there were problems with Fiasco when petitioner was transferred to his command. He noted it created a "tense atmosphere." Botteri also noted that he had experienced Fiasco's "harassment" while his subordinate.

Theresa Morris testified that when she first married petitioner in 1990, he was very "low-key" and well-liked. She stated that he was "in love with his job as a police officer" and

---

[2]A major event described in this testimony occurred after petitioner left the force.

that he kept himself fit. Mrs. Morris noted that prior to all of these incidents, petitioner simultaneously handled work, law school, and a family "[w]onderfully."

Mrs. Morris also explained her "uncomfortable" experiences with Sergeant Fiasco. On one occasion, on the way to a funeral, Fiasco pulled her over, and suggested that they meet on a "tree lined road . . . [where] [y]ou wouldn't be able see from the main road." She felt he was "definitely" "proposition[ing]" her. Mrs. Morris explained that after her husband confronted Fiasco and informed his superiors of what was happening, she noticed a change in the way he was treated at the station. She felt that because Fiasco and the Chief were "very good friends," her husband was "ignor[ed]" for things such as training courses and promotions. Ultimately, petitioner was switched to Fiasco's command.

During this time, petitioner "was becoming very paranoid." He developed an "eating disorder" and "totally has changed his appearance." He stopped attending family parties and neighborhood gatherings. Petitioner's wife explained that petitioner's relationship with his daughter changed in that he no longer takes an active interest or gets involved with her life as he did in the past.

Mrs. Morris further testified that she now handles the phone calls for petitioner's law practice because "he cannot deal with people" or "conflicts." She noted that "[h]e is not the calm

rationale reasonable person that he used to be." "He has a hard time even working," and his condition is not improving.

Detective Charles Petty, Jr., worked with petitioner for several years and conducted the internal investigation regarding his wife's complaint against Sergeant Fiasco. He noted that the investigation was terminated by petitioner because "he didn't want to put his wife, Theresa, through [it]." Between the time the incident with Fiasco occurred and the time petitioner left the force, Petty stated that "his statistics went down dramatically" and he "didn't work as hard." Petty stated, "[h]e wasn't allowed to switch shifts any more and we knew that was -- we felt that was [in] retaliation."

The Chief testified that petitioner's problems began when he "started [law] school," and that his job performance started to "slow down." The Chief stated that he received calls from people in the neighborhood requesting that petitioner not "answer any[] more calls" in their area.

The Chief "noticed" that in 1995 petitioner's "stress" from "trying to run a family, [being] an attorney . . . and also swinging through shifts" increased. The Chief testified that petitioner was assigned to Fiasco's squad because Sergeant Mihalik was allowing Morris to do his legal work while on duty and he knew that Fiasco was more demanding of his officers. Thus, instead of writing Morris up for "sliding by" in his job, he was transferred to the command of a different sergeant who

would not let him do so. According to the Chief, the incident between Fiasco and Morris' wife had been "closed," and the Chief had told Fiasco that "if, in fact it [was] true, [he] want[ed] it knocked off."

Sergeant Fiasco denied that he ever made advances toward Mrs. Morris and specifically denied the instances to which she referred. Fiasco testified that he never discussed these allegations with petitioner. Fiasco described himself as "[n]o nonsense, by the book." He stated that he never told petitioner he would not back him up in the field. Fiasco stated that he was not aware of the letter Morris wrote to the Chief objecting to the assignment change, and denied ever telling petitioner to delete any references to the incident with the Chief from his report.

Petitioner offered Dr. Robert S. Dengrove as a forensic expert in psychiatry and neurology. Dr. Dengrove examined petitioner on November 10, 1997, and diagnosed Morris as having "post traumatic stress disorder, dysthymic disorder and panic disorder" with agoraphobia, and detailed the symptoms he showed for each. Dr. Dengrove opined "that in all medical probability [the] cause of these complaints relate to the work environment [to] which Patrolman Morris was exposed." Regarding permanent disability from this exposure, Dr. Dengrove opined that "[petitioner] continues to suffer from a chronic post traumatic stress disorder and dysthymic disorder with panic attacks as a

result of his exposure to the work environment as described."

According to Dr. Dengrove, the initial incident with the Chief:

> set[] forth a pattern of harassment which led to a unique meaning when [he] was eventually assigned under Sergeant Fiasco and once assigned to Sergeant Fiasco and found himself patrolling without a workable service revolver, patrolling in back areas where he was told he wasn't going to have back up, feeling himself endangered, we have this pattern of harassment which lead [sic] to a very significant meaning when he's eventually transferred to Sergeant Fiasco.

Thus, the events prior to 1995 "set the stage" for what eventually became "acute" upon the transfer to Fiasco's command.

Dr. Dengrove did not believe that petitioner's commute to school and amount of school work caused his emotional difficulties because petitioner "had control over those situations and [that] was a question of choice whereas in the instances as we have described and recounted, there was a feeling of being out of control and feeling that he did not have [a] choice." Dr. Dengrove described petitioner as having a compulsive personality, but that such a personality helped him keep his life in order before the transfer to Fiasco's command at which time petitioner began to feel "his life was at risk . . . without having any recourse." Dr. Dengrove concluded that petitioner "is 100 percent disabled at this time and unable to work."

Dr. Jon E. Courtney, a psychiatrist, testified for

respondent. Dr. Courtney first examined petitioner on April 16, 1996, and then again on November 17, 1997. After the second examination, Dr. Courtney estimated a permanent psychiatric disability of 15%. Dr. Courtney stated that petitioner's condition "seemed to have plateaued." However, Dr. Courtney was still concerned about petitioner's aversion to being around other people and how he was "isolating himself."

I.

The judgment is affirmed substantially for the reasons expressed by Judge Chester Apy in his formal written decision of December 9, 1999. Judge Apy not only made fact-finding which is entitled to great deference, see Close v. Kordulak Bros., 44 N.J. 589, 598-99 (1965), but he did so based on careful and detailed evaluations of credibility. The judge found petitioner and his wife "to be accurate, true and believable." He found that Officers Boccanfusso and Mulvan "substantiated" petitioner's testimony and the objectionable reasonableness of his reaction. The judge put "no credence in Sergeant Fiasco's testimony," and found that "the conditions to which Officer Morris was exposed were both 'objective' and 'stressful,' . . . [and beyond that] which are common to any employment." He also found that the conditions [were] unique and peculiar to [petitioner's] situation" and that his "present disability" resulted from the work-related stress. He further found that even respondent's Dr. Courtney presented "objective medical evidence" on causation.

The judge concluded:

> In summary, the court finds that because of the events associated with his employment the petitioner's life has been both inexorably changed and significantly diminished. He has a psychiatric disability retirement as a police officer because of his inability to function as one. As best described by his wife, his life now bears no relationship to his life before he had his breakdown. He has gone from a model father and husband and successful and enthusiastic public servant, with opportunities abounding, to becoming a virtual recluse from his family and friends. He requires medication continually to cope with life, and ongoing counseling on a regular basis has been required until recently. These factors lead the court to find that the petitioner is disabled 50% of permanent partial total for those conditions described and identified by Dr. Dengrove in his report. Based on the rates for 1995 this will entitle the petitioner to an award of 300 weeks at $313 for a total of $93,900.
>
> Petitioner has also claimed that he is entitled to temporary disability from November 8, 1995 until November 10, 1997, the former being the date when he left the department, and the latter the date of Dr. Dengrove's finding of permanent psychiatric disability. Based on the facts set forth and Dr. Dengrove's opinion the claim by the petitioner for temporary disability is found by the court to have been proven by a preponderance of the credible evidence, and implicitly concurred in by Dr. Courtney as well. Consequently, petitioner is entitled to 733 days of temporary disability, or 104 and 5/7 weeks at $469 a week totalling $49,110.87.

The judge, however, found no basis to award interest or a penalty, concluding that the "defenses [were] made in good faith."

Judge Apy, in essence, rendered a full, detailed and

convincing opinion which compels our affirmance. We add only the following.

II.

The primary issue before us is whether the judge of compensation properly found, based on the record, that petitioner's psychiatric illness arose out of the course of his employment, thereby entitling him to temporary medical and disability payments and permanent partial disability benefits. As already noted, our scope of review is limited to "whether the findings of the judge of compensation could reasonably have been reached on sufficient credible evidence present in the whole record, after giving due weight to his expertise in the field and his opportunity of hearing and seeing the witnesses." De Angelo v. Alsan Masons Inc., 122 N.J. Super. 88, 89-90 (App. Div.), aff'd o.b., 62 N.J. 581 (1973); Close v. Kordulak Bros., supra, 44 N.J. at 599. As also noted above, the judge detailed his findings of fact and conclusions of law. He included the following:

> 1) Were the conditions to which petitioner was exposed objectively stressful? The foregoing findings of fact lead this court to the inescapable conclusion the conditions to which officer Morris was exposed were both "objective" and "stressful," and that equally significantly, they were not conditions associated with an excessive workload, fear of being fired or fear of losing benefits, all of which are common to any employment. As already noted, the key ingredient was the relationship of petitioner as a subordinate police officer throughout his career to superior officers, Sergeant Fiasco and Chief

Krych, who through the conduct described successfully ruined the petitioner's career in law enforcement. 2) Did the petitioner react to these conditions as stressful? Again the findings of fact set forth above clearly lead to the conclusion that the petitioner reacted to them as stressful, and that this reaction has resulted in his present disability. Both doctors so agreed, and described clear, objective medical evidence in so doing. 3) Were the stressful working conditions "peculiar" to the workplace? Again, the court finds the foregoing circumstances and history of petitioner's employment lead to the inescapable conclusion that what occurred was unique and peculiar to his particular situation, that situation being a unique and peculiar relationship with both of his immediate superiors, each of whom controlled to a major degree petitioner's professional life and career as a police officer. Their control was unique among all of his superiors. That control was used by them to retaliate against and seek to control the petitioner by ways and means beyond the accepted protocol and established practices of the police department. Nowhere is there any evidence of any charges ever having been brought against the petitioner based upon his performance as a police officer. It was not the petitioner, but the conduct of the sergeant and the chief which was the cause of petitioner's ultimate downfall as a police officer. Although the three principal events described above [including the incident regarding the Chief's intoxication and injuries] are all significant, . . . Fiasco's attempt to "make out" with the petitioner's wife and the chief's assignment of petitioner to Fiasco's squad [] were the most significant, the last creating a totally intolerable situation which resulted in petitioner's breakdown.

Put another way, there is nothing in the record to indicate that "merited criticism" had anything to do with petitioner's present condition.

The New Jersey Worker's Compensation Act, N.J.S.A. 34:15-1, et seq. ("Act"), allows for recovery of a work-induced psychiatric disability. N.J.S.A. 34:15-36. "'Disability permanent in quality and total in character' means a physical or neuropsychiatric total permanent impairment caused by a compensable accident or compensable occupational disease, where no fundamental or marked improvement in such condition can be reasonably expected." Ibid. "'Disability permanent in quality and partial in character' means a permanent impairment caused by a compensable accident or compensable occupational disease, based upon demonstrable objective medical evidence[.] . . ." Ibid. The Act defines a "compensable occupational disease" as including "all diseases arising out of and in the course of employment, which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment." N.J.S.A. 34:15-31. "The requirement to link the place of employment with the disease, by a 'material degree' requires a petitioner to show the nexus by an 'appreciable degree or a degree substantially greater than de minimis.'" Magaw v. Middletown Bd. of Educ., 323 N.J. Super. 1, 11 (App. Div.), certif. denied, 162 N.J. 485 (1999) (citation omitted). The petitioner has the burden to show the link is "probable[,]" not "certain." Ibid.

In Goyden v. State Judiciary, 256 N.J. Super. 438, 445-46 (App. Div. 1991), aff'd o.b., 128 N.J. 54 (1992), we set forth

the requirements for a successful claim for psychiatric disability, stating:

> [F]or a worker's mental condition to be compensable, the working conditions must be stressful, viewed objectively, and the believable evidence must support a finding that the worker reacted to them as stressful. In addition, . . . the objectively stressful working conditions must be "peculiar" to the particular work place, and there must be objective evidence supporting a medical opinion of the resulting psychiatric disability, in addition to "the bare statement of the patient."
>
> [256 N.J. Super. at 445-46 (citations omitted).]

Given our scope of review, the judgment must be affirmed. Petitioner established a clear link between his psychiatric problems and his employment as a police officer and the incidents that happened while on the job. The "final blow" was petitioner's transfer to Sergeant Fiasco's command where he became "scared to death." Petitioner's wife testified to the impact this assignment had on petitioner. She stated that he was constantly worried that he would not receive back-up. She noted that this squad change was the "biggest thing that altered [petitioner's] relationship" with the department. Petitioner's reaction was objectively reasonable in light of the experience of others with Fiasco, Fiasco's approaches to his wife, and his complaints about Fiasco.

The record also contains sufficient "demonstrative objective medical evidence" to substantiate petitioner's claims of psychiatric disability. Dr. Dengrove considered the events

referred to by petitioner in his testimony as the basis for his condition. Dr. Dengrove noted petitioner demonstrated emotional difficulties, but also that petitioner had physical symptoms including displays of constant agitation, irritability, and impatience; he clenched his teeth; he experienced dry mouth, blurred vision, and episodic rashes; he re-experiences "intrusive and distressing recollections of being at work" and intense psychological distress when reminded of the police force. Dr. Dengrove's report concluded as follows:

> At the time of my evaluation, Mr. Morris both experienced and exhibited the diagnostic criteria for a Post Traumatic Stress Disorder . . . with associated features of anxiety and depression, phobic avoidance and psychophysiological features, Dysthymic Disorder . . . with a Beck Depression Inventory score of 23, and a Panic Disorder with agoraphobia . . . as a result, in all medical probability, from the trauma arising out of his employment as a Police Officer for the Township of Washington, Mercer County for the period of employment from 1986-1[1]/8/95 as described above. These diagnoses are indicated by the subjective complaints listed above and by the objective signs noted in the Mental State Examination.
>
> It is my opinion that Mr. James Morris has, at this time, approximately 100% of total disability of the whole person due to the neuropsychiatric condition resulting from the work related injuries sustained between 1986-1[1]/8/95 as described above. It is my opinion that this petitioner can continue to benefit from further individual medical psychotherapy and pharmacological management to target the Post-Traumatic Stress Disorder, Depression, and Panic.

Even respondent's Dr. Courtney ultimately concluded:

> James in reaction to the various incidents at work for the above developed a stress reaction and his diagnosis is adjustment disorder with anxiety. He is not complaining of a problem with depressed mood. At this point he has improved, but has also plateaued.
>
> In my opinion there is a 15% permanent psychiatric impairment due to his work with the d/a: 11/8/95. At this point he has plateaued in his improvement. His treatment now consists of psychopharmacology. He is not involved in any talk therapy. The possibility of his working with someone such as a psychologist to see if he can make some further gains in his functioning was discussed with him and he showed interest in pursuing this.
>
> [(emphasis added).]

The parties do not dispute that petitioner suffers from a psychiatric disability, and there is sufficient credible evidence in the record to sustain the compensation court's findings that it is work related to "a material degree."

III.

The judge of compensation found that petitioner was entitled to temporary disability benefits from November 8, 1995, the date he left the force, until November 10, 1997, the date of Dr. Dengrove's finding of permanent psychiatric disability. He was correct in so concluding. As we said in Harbatuk v. S&S Furniture Sys. Insulation, 211 N.J. Super. 614, 620-21 (App. Div. 1986), temporary disability benefits are to be paid

> from "the day that the employee is first unable to continue at work by reason of the accident . . . up to the first working day that the employee is able to resume work and

> continue permanently thereat," N.J.S.A. 34:15-38, or until he "is as far restored as the permanent character of the injury will permit - the determinant date being whichever of these events happens first."
>
> [Ibid. (citations omitted).]

The fact that petitioner was able to do a few real estate closings and earned $20,000 in 1997 is not dispositive. Harbatuk, supra, 211 N.J. Super. at 624 (stating "the mere fact that petitioner might have been able to work a few hours at a time at light work should not be a sufficient basis for precluding an award of temporary disability benefits"). "An employee may be totally and permanently disabled and yet have some degree of earning power. The ability for light or intermittent or sedentary work is not inconsistent per se with total incapacity." Ibid.

We also reject respondent's claim that the award of a 50% partial permanent disability was excessive. Even respondent's Dr. Courtney opined that petitioner had a 15% permanent psychiatric impairment, although he might make "further gains in his functioning" through psychotherapy. On the other hand, Dr. Dengrove concluded that petitioner has 100% total disability. In any event, the conclusion that petitioner is 50% disabled is based on the substantial evidence in the record, based on the finding of "an appreciable impairment of [petitioner's] ability to work," Perez v. Pantasote, Inc., 95 N.J. 105, 117 (1984), and that he has "suffered a lessening to a material degree of his

working ability[.]" Id. at 118.

IV.

Finally, we uphold the award of counsel fees. N.J.S.A. 34:15-64 permits that "[t]he official conducting any hearing under this chapter may allow to the party in whose favor judgment is entered . . . a reasonable attorney fee, not exceeding 20% of the judgment." The judge of compensation need require an affidavit "only in cases involving a request for a substantial attorney's fee." Gromack v. Johns-Manville Prods. Corp., 147 N.J. Super. 131, 136 n.2 (App. Div. 1977). This court may modify or set aside an award of attorney's fees by the compensation judge "only if it is manifestly excessive or inadequate and thus involves an abuse of discretion." Id. at 137 (citations omitted).

The counsel fee award of $28,600 ($21,090 of which is payable by respondent) is below the 20% statutory limit. Respondent does not contend otherwise.[3] Rather, it asserts that:

> Periodically, the Director and Chief Judge of the Division of Workers' [C]ompensation issues a memorandum setting forth the maximum counsel fee which may be awarded in a single case by a judge of compensation without requiring an affidavit

---

[3]In Haberberger v. Myer, 4 N.J. 116, 124 (1950), the Supreme Court noted that the 20% restriction "limits the gross amount of fees for legal services that can be assessed against both the employer and the employee . . ." While a subsequent statutory amendment removed the award limitation based on the excess above the offer made, there appears to be no change in the policy relating to the percentage as applying to the award against both the employer and employee.

> of services. The most recent memorandum issued by the Director and Chief Judge was issued on May 16, 1999, and fixed the maximum fee at $21,000.00.
>
> In this case, Respondent is unaware of an affidavit of services having been filed, and the Judge of Compensation awarded a counsel fee of $28,600.00.

The parties agree that on March 19, 1999, the Director/Chief Judge issued the following memorandum to "All Judges":

> Effective April 1, 1999 the maximum allowable counsel fee that may be awarded without requiring an Affidavit of Services shall be $21,000.
>
> Upon allowance of a fee greater than $21,000 please forward a copy of the judgment, order approving settlement or section 20 together with a copy of the Affidavit of Services directly to me. The original documents shall remain in the file. The Affidavit of Services shall continue to comply with prior memoranda.
>
> In addition, please be reminded that your "compendium of memoranda" contains an earlier memorandum from this office regarding the maximum allowable counsel fee without affidavit. That memo should be removed and the within substituted.
>
> Thank you for your attention to this matter of mutual interest.

In awarding counsel fees, Judge Apy stated:

> Counsel fees will be as follows: On that portion of the award pertaining to permanent disability, $18,780 payable $7,510 by petitioner and $11,270 by the respondent. As to the temporary disability award, the counsel fee will be $9,820 payable by the respondent. In total, therefore, the counsel fee will be $28,600 payable $7,510 by the

petitioner and $21,090 by the respondent.[4]

Petitioner insists that the memorandum was satisfied because "the [m]emorandum contemplates that an Affidavit for an increased fee will be necessary if the fee exceeds $21,000.00 per fee event" and that here the award was for two "distinct fee awards" for temporary and permanent disability benefits which individually were less than $21,000 each.

If the judge of compensation violated the policy of the Division in terms of an assessment in the absence of an affidavit of services, the matter should be reviewed internally. However, an internal memorandum of the Director/Chief Judge, while enforceable in terms of the internal administration of the Department of Labor and Division of Workers' Compensation, is not binding on us nor a basis for changing statutory law. Clearly, the statute contemplates the adoption of "rules and regulations" on this subject. However, neither party suggests the internal memorandum constituted a regulation, see Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 330-32 (1984), which might solve the issues of interpretation addressed to the memorandum.

V.

The judgment is in all respects affirmed.

---

[4]The judgment awarded $49,110.87 for temporary benefits and $93,900 in permanent benefits, totalling $143,010.87. Twenty percent of that figure is just over the $28,600 awarded.