

U. S. DEPARTMENT OF LABOR  
Employees' Compensation Appeals Board

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In the Matter of THOMAS DaGROSSA and U.S. POSTAL SERVICE,  
POST OFFICE, Atlantic City, N.J.

*Docket No. 96-1010; Submitted on the Record;  
Issued March 4, 1998*

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DECISION and ORDER

Re: Attorney's Fee

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in approving an attorney's fee in the amount of \$142.00.

The Board has duly reviewed the case record and finds that the Office abused its discretion in approving an attorney's fee in the amount of \$142.00.

On June 28, 1995 Thomas R. Uliase, appellant's representative before the Office, submitted an itemized statement requesting approval by the Office of a fee in the amount of \$3,188.50 for 22.77 hours of work performed from December 19, 1992 through June 12, 1995 at a varied billing rate. Included with the fee petition was a statement signed by the executrix of appellant's estate<sup>1</sup> approving the fee requested. Appellant's claim for compensation had been accepted for employment-related stress, and he received appropriate compensation, including retroactive payment to his estate after his death.

By letter dated October 12, 1995, the Office informed appellant that, as required by 20 C.F.R. § 10.145(b)(2), for an accurate review of his fee application, each action should be listed and billed separately. In a November 3, 1995 letter, Mr. Uliase informed the Office that the fee request submitted was itemized and that he billed at a rate of \$150.00 an hour for his services, \$100.00 an hour for paralegal services, and \$50.00 for clerical services. By decision dated November 21, 1995, the Office approved Mr. Uliase's fee request in the amount of \$142.00 for legal services rendered from December 9, 1992 to June 13, 1995. The Office recognized that the reasonableness of the fee request was not contested and found the fee awarded was reasonably

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<sup>1</sup> The record indicates that appellant died on November 12, 1993 and his mother, Alda DaGrossa was appointed his executrix. The record also indicates that, by decision dated November 16, 1992, the Office approved a fee in the amount of \$2,219.00 for services rendered from November 6, 1990 to February 25, 1992.

commensurate with the actual necessary work performed in representing appellant before the Office. The Office noted that \$21.00 of the fee could not be approved because the services were rendered before another government agency or were for correspondence with congressional offices and, regarding the majority of charges, found it was impossible to review much of the fee request as Mr. Uliase lumped his charges and did not specify “the time spent and charge for each service.

The criteria governing the approval of fees for representation services are set forth in 20 C.F.R. § 10.145(b), which provides in pertinent part:

“The fee approved by the Office will be determined on the basis of the actual necessary work performed and will generally include but are not limited to the following factors:

- (1) Usefulness of the representative’s services to the claimant.
- (2) The nature and complexity of the claim.
- (3) The actual time spent on development and presentation of the claim.
- (4) The amount of compensation accrued and potential future payments.
- (5) Customary local charges for similar services.
- (6) Professional qualifications of the representatives.”

The Board’s sole function is to determine whether the action taken by the Office in the matter of the attorney’s fee constituted an abuse of discretion.<sup>2</sup> Generally, abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.<sup>3</sup>

In this case, the record indicates that in approving the \$142.00 fee, the Office took the above criteria into consideration and properly found that a fee was not allowable for work before another agency or for correspondence with congressional offices.<sup>4</sup> The fee application submitted, however, includes a breakdown in handwriting of the time spent for many of the tasks billed which the Board finds is in compliance with Office regulations.<sup>5</sup> The Office, therefore, erred in

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<sup>2</sup> See *Regina G. Jackson*, 41 ECAB 321 (1989).

<sup>3</sup> *Billy Ware Forbess*, 45 ECAB 669 (1994).

<sup>4</sup> 20 C.F.R. § 10.145(e)(1).

<sup>5</sup> 20 C.F.R. § 10.145(c)(2), (3).

not granting approval of attorney's fees for these dates.<sup>6</sup> The fee petition, however, does not include a itemization for services rendered on December 9, 1992, September 9, November 17, 24 and 30, 1993,4 and the Office properly disallowed the fee request for those dates. As Mr. Uliase provided proper itemization for his fee request for services rendered from January 25, 1994 to June 12, 1995 which was disallowed by the Office, the case must be returned to the Office for further consideration. Upon the return of the case record to the Office, the Office should review the fee application for the hours of legal services performed during the period January 15, 1994 to June 12, 1995.

The decision of the Office of Workers' Compensation Programs dated November 21, 1995 is affirmed as modified and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.  
March 4, 1998

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>6</sup> The specific dates for which proper itemization is provided are as follows: January 25, April 4 and 7, May 9 and 12, June 30, July 5, 11 and 22, August 2, October 11, December 15, 20 and 30, 1994, February 23, April 18, and June 12, 1995.