

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOWARD L. MILLER and DEPARTMENT OF ENERGY,
BONNEVILLE POWER ADMINISTRATION, Vancouver, Wash.

*Docket No. 97-915; Submitted on the Record;
Issued February 12, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by approving appellant's attorney's fee of \$1,402.50.

By letter dated May 13, 1996, which was accompanied by an itemized statement, Norman R. McNulty, Jr., Esquire, of Spokane, Washington, appellant's representative before the Office, requested approval by the Office of a fee in the amount of one thousand four hundred and two dollars and fifty cents (\$1,402.50) for 12.75 hours of work performed from May 3, 1995 through April 17, 1996 at a billing rate of one hundred ten dollars (\$110.00) per hour. Attached to the letter and itemized statement of professional services was a statement indicating agreement with the above fee, signed and dated by appellant on May 10, 1996.

By letter to the Office, to his Congressional representative and to his legal representative, dated October 30, 1996, appellant addressed Mr. McNulty's bill stating that he did not dispute the bill but would like to know who should be the one to pay for it. Appellant argued that he was on a no pay status for almost a year and one half and he suggested that the employing establishment and the Office should have to pay.

By decision dated November 26, 1996, which incorporated findings of fact, the Office approved Mr. McNulty's fee request in the amount of \$1,402.50 for legal services, rendered from May 3, 1995 through April 17, 1996, on the grounds that such fee was reasonably commensurate with the actual necessary work performed in representing appellant before the Office. The Office noted that pursuant to 5 U.S.C. § 8127 and 20 C.F.R. § 10.145 a claimant was legally liable for only those fees for service that have been approved by the Office. In the findings of fact the Office noted that the claimant had not contested the reasonableness of the amount of the fee.

In response to appellant's Congressional representative's inquiry, the Office issued a letter also dated November 26, 1996 which advised as follows:

"While we recognize that [appellant] suffered financial hardship during the time his claim for wage-loss compensation was pending, we are unable to assist in the payment of his attorney's fee. 20 C.F.R. § 10.145 provides that [the] Office ... will determine the reasonableness of a fee being charged by a claimant's representative, but section 'f' of this regulation specifically states that 'The Office will not pay or assist in the collection of any representative fee.'"

On December 9, 1996 appellant filed an appeal of the Office's November 26, 1996 decision with the Board, wanting to know why he should be responsible for paying his attorney's fee instead of the employing establishment or the Office.

The Board finds that the Office did not abuse its discretion in approving an attorney's fee of \$1,402.50.

The criteria governing the approved of fees for representation services are set forth in 20 C.F.R. § 10.145(b) which provides as follows:

"(b) 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 representative."

The record shows that in approving the \$1,402.50 fee, the Office took into consideration the criteria set forth in 20 C.F.R. § 10.145 pertaining to fees for representative's services, including the services performed by Mr. McNulty, the time devoted to each service as set forth in his itemized statement, the complexity of appellant's case, the amount of compensation accrued by appellant, and Mr. McNulty's hourly rate in comparison to the customary local charges for similar services.

Appellant contends on appeal, as he did before the Office, that it is the Office's obligation to pay his attorney's fee. However, there is no provision in the Federal Employees'

Compensation Act¹ or its implementing regulations² for payment of a claimant's attorney fees. Section 10.145(f) of the implementing regulations provides that the "Office will not pay ... any representative fee."³ Thus, regardless of the reasons which may have necessitated an attorney's services, it is well established that an attorney's fee is the personal obligation of the claimant, subject to prior approval by the Office for legal services performed before it.⁴ In addition, the Board notes that, attached to the attorney's May 13, 1996 fee petition was a signed statement from appellant indicating that Mr. McNulty's listed services were correct and that the fee request was reasonable. Appellant has not contended or shown that Mr. McNulty did not perform the work for which the fee was charged or that Mr. McNulty's representation was deficient in any manner.

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 26, 1996 is hereby affirmed.

Dated, Washington, D.C.
February 12, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.1 *et seq.*; 20 C.F.R. § 501.1 *et seq.*

³ 20 C.F.R. § 10.145(f).

⁴ *John E. Watson*, 44 ECAB 612, 615 (1993); *John E. Harman*, 41 ECAB 169,176 (1989); *Jeffrey Atkins*, 34 ECAB 44 (1982).