

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNA RILEY and U.S. POSTAL SERVICE,  
POST OFFICE, Sioux Falls, SD

*Docket No. 98-1334; Submitted on the Record;  
Issued April 12, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by approving appellant's attorney fee of \$10,442.40.

The Board has duly reviewed the case record on appeal and finds that the Office did not abuse its discretion by approving appellant's attorney fee of \$10,442.40.

By letter dated August 25, 1997, which was accompanied by an itemized statement, Dennis H. Hill, Esquire, of Rapid City, South Dakota, appellant's representative before the Office, requested approval by the Office of a fee in the amount of eleven thousand nine hundred forty-two dollars and forty cents (\$11,942.40) for work performed from October 1, 1996 to August 6, 1997 at a billing rate of \$150.00 per hour. Attached to the itemized statement of professional services was a statement indicating agreement with the above fee, signed and dated by appellant on August 22, 1997.

By decision dated September 18, 1997, which included findings of facts, the Office approved the fee in the amount of \$10,442.40.<sup>1</sup> 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 had been approved by the Office. In the findings of fact, the Office noted that appellant had not contested the reasonableness of the amount of the fee.

Appellant requested a review of the written record on October 8, 1997 on the issue of whether payment of the approved fee was appellant's responsibility. She stated that payment of attorney fees in the matter should be directed to the employing establishment. Appellant stated on October 22, 1997 that an exception should be made in her case. By decision dated

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<sup>1</sup> The Office disallowed 10 hours of labor at \$150.00 for "Balance estimated closing and finalization of file." Neither appellant nor her attorney appealed this aspect of the decision.

December 17, 1997, the hearing representative affirmed the Office's September 18, 1997 decision.

The criteria governing the approval 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 for 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 \$10,442.40 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 usefulness of the services to appellant, the nature and complexity of the claim, the time spent on the claim, the financial condition of the claimant, the claimant's comments, the customary charges for similar services, and the professional qualifications of the representative.

Appellant contends on appeal, as she did before the hearing representative, that it is the employing establishment's obligation to pay her attorney's fees. However, there is no provision in the Federal Employees' Compensation Act<sup>2</sup> or its implementing regulations<sup>3</sup> for payment of a claimant's attorney fees. Section 10.145(f) of the implementing regulations provides that the “Office will not pay or assist in the collection of any representative fee.”<sup>4</sup> In addition, the Board notes that, attached to the attorney's August 22, 1997 fee petition was a signed statement from appellant indicated that Mr. Hill's listed services were correct and that the fee request was reasonable. Appellant has not contended or shown that Mr. Hill did not perform the work for which the fee was charged or that Mr. Hill's representation was deficient in any manner.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.1 *et seq.*; 20 C.F.R. § 501.1 *et seq.*

<sup>4</sup> 20 C.F.R. § 10.145(f).

The decision of the Office of Workers' Compensation Programs dated December 17, 1997 is hereby affirmed.

Dated, Washington, D.C.  
April 12, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member