

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AMELIA SALES and U.S. POSTAL SERVICE,
POST OFFICE, Pasadena, CA

*Docket No. 02-267; Submitted on the Record;
Issued July 11, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by approving representative fees in the amount of \$3,140.00.

In a decision dated July 20, 2001, the Office approved the request of appellant's representative for fees of \$3,140.00 for services rendered from November 5, 1998 to September 20, 2000. The Office stated that appellant had not contested the reasonableness of the fee.¹

In a letter dated October 21, 2000, stamped as received by the Office on October 31, 2000, appellant stated her reasons for contesting the reasonableness of the requested representative's fees. She included a copy of the representative's itemized Statement of Services dated September 20, 2000.

By letter dated November 10, 200, appellant's representative submitted his application for approval of fees in the amount of \$3,140.00 and a copy of his itemized statement of services rendered.

The Board finds that the Office abused its discretion by approving representative's fees in the amount of \$3,140.00.

It is not the Board's function to determine the fee for services performed by a representative of a claimant before the Office.² That is a function within the discretion of the Office based on the criteria set forth in section 10.703 of Title 20 of the Code of Federal

¹ The record contains additional evidence that was not before the Office at the time it issued its July 20, 2001 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

² *Arthur Sims*, 46 ECAB 880 (1995).

Regulations.³ This section provides that the fee approved by the Office will be based on the following factors:

- “(1) Usefulness of the representative’s services;
- “(2) The nature and complexity of the claim;
- “(3) The actual time spent on development and presentation of the claim; and
- “(4) Customary local charges for similar services.”

The Board’s sole function is to determine whether the action taken by the Office on the matter of the representative fees constituted an abuse of discretion.⁴ The Board has frequently stated that it will not interfere with or set aside a determination by the Office of a fee for representative services unless the record supports that the determination made by the Office represents an abuse of discretion. Generally, abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken that are contrary to both logic and probable deductions from known facts.⁵

A claimant must be given an opportunity to comment on the reasonableness of the fees requested.⁶ In this case, the Office stated in its July 20, 2001 decision approving the requested representative’s fees that appellant did not contest the reasonableness of the fees. However, the record shows that appellant submitted a letter dated October 21, 2000 and received by the Office on October 31, 2000 in which she stated her objections to the reasonableness of the representative’s fees requested.

Under these circumstances, the Board finds that the Office abused its discretion by approving the requested fee. Accordingly, the Board will remand the case for the Office to consider appellant’s comments regarding the reasonableness of the requested representative fees. After such further development as may be necessary, the Office shall issue an appropriate final decision on the application for approval of representative’s fees.

³ 20 C.F.R. § 10.702.

⁴ *Barbara Robertson (Paul Robertson)*, 41 ECAB 393 (1990); *Regina G. Jackson*, 41 ECAB 321 (1989).

⁵ *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).

⁶ *Andrew A. Miller*, 34 ECAB 1002 (1983); *George W. Schumacher*, 29 ECAB 84 (1977).

The decision of the Office of Workers' Compensation Programs dated July 20, 2001 is set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
July 11, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member