

**United States Department of Labor
Employees' Compensation Appeals Board**

J.W., Appellant)	
)	
and)	Docket No. 11-901
)	Issued: February 23, 2012
U.S. POSTAL SERVICE, POST OFFICE, Mechanicsville, MD, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER
Re: Attorney's Fee

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 3, 2011 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) decisions dated October 25, 2010 and February 2, 2011 concerning the approval of an attorney's fee. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether OWCP abused its discretion by approving an attorney's fee in the amount of \$900.00 for services rendered during the period May 21 through August 19, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

² As appellant indicated that he was appealing from the attorney's fee decision, the Board will not review the September 28, 2010 schedule award decision on this appeal. *See* 20 C.F.R. § 501.3.

FACTUAL HISTORY

On December 26, 2009 appellant, then a 41-year-old rural carrier, filed a traumatic injury claim alleging that on December 24, 2009 he fractured his right ankle when he slipped on snow and ice in a driveway. OWCP accepted the claim for right ankle deltoid ligament strain and closed fracture of the right lateral malleolus ankle. Appellant returned to full-duty work on March 18, 2010. In a letter to OWCP dated August 21 and 31, 2010, he appointed Stuart J. Snyder, Esquire, as legal counsel with respect to the claim.

In an October 17, 2010 correspondence, appellant requested that OWCP reduce Mr. Snyder's fee request by \$300.00. He stated that he met with Mr. Snyder about the fee petition and felt pressured to sign a fee petition agreement for \$900.00 for services rendered. Appellant noted that Mr. Snyder billed him for an hour of services on May 24, 2010, which were not performed as appellant had worked that day.

On October 22, 2010 OWCP received Mr. Snyder's fee petition for the period May 21 through August 9, 2010. Mr. Snyder detailed the services provided to appellant and the amount of time he spent on each. The listed fees totaled \$900.00 for the period May 21 through August 9, 2010 for three hours with an hourly rate of \$300.00. The fee request detailed such individual services as speaking to appellant about his claim, arranging a medical appointment to determine his permanent impairment for schedule award purposes and reviewing medical evidence. Mr. Snyder billed appellant for services that he stated were rendered on May 21, 2010 for one and a half hours, May 24, 2010 for one hour and August 18, 2010 for one-half hour. He requested that appellant sign his agreement to the fee request and medical bill fee for \$435.00, which appellant did on October 17, 2010. A copy of the signed agreement was attached to the fee application that Mr. Snyder submitted to OWCP for its approval.

In a decision dated October 25, 2010, OWCP approved the fee for services rendered on behalf of appellant in the amount of \$900.00 for the period May 21 to August 19, 2010.

On October 28, 2010 appellant requested a review of the written record by an OWCP hearing representative. He reiterated that he was being wrongly billed by Mr. Snyder for one hour of services rendered on May 24, 2010 when he was at work and did not see Mr. Snyder that day. In support of his contention, appellant submitted a copy of his time sheet showing that he worked on May 24, 2010 from 8:45 a.m. to 2:05 p.m.

In a decision dated February 2, 2011, OWCP's hearing representative affirmed the October 25, 2010 fee petition. The hearing representative found that on October 17, 2010 appellant signed a document agreeing to the services and amount billed that Mr. Snyder stated that he provided and that it was not clear why he subsequently determined that the requested fee was not reasonable. OWCP's hearing representative noted that, while appellant established that he worked on May 24, 2010, he failed to submit any evidence to establish that the services were not provided or that he was incorrectly charged for services in the amount of \$300.00.

LEGAL PRECEDENT

It is not the Board's function to determine the fee for representative services performed before OWCP. That is a function within the discretion of OWCP based on the criteria set forth in Title 20 of the Code of Federal Regulations and mandated by Board decisions. The Board's sole function is to determine whether the action by OWCP constituted an abuse of discretion.³ Generally, an 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 established facts.⁴

Section 10.703 of the Code of Federal Regulations provide in pertinent part that a representative must submit a fee application, which includes a statement of agreement or disagreement with the amount charged, signed by the claimant.⁵ When a fee application has been disputed, OWCP is required to provide the claimant with a copy of the fee application and request the submission of further information in support of any objection.⁶ After the claimant has been afforded 15 days from the date the request was forwarded to respond to the request, OWCP will then proceed to review the fee application to determine whether the amount of the fee is substantially in excess of the value of services received by looking at the following factors: (i) usefulness of the representative's services; (ii) the nature and complexity of the claim; (iii) the actual time spent on development and presentation of the claim; and (iv) customary local charges for similar services.⁷

ANALYSIS

On appeal to the Board, appellant contends that OWCP abused its discretion by failing to consider that Mr. Snyder billed him for an hour of services on May 24, 2010. He contended that services were not performed as he worked that day. Appellant requested that the Board reduce Mr. Snyder's attorney's fee to \$600.00 instead of \$900.00.

The Board finds that OWCP considered the relevant criteria of 20 C.F.R. § 10.703 in its October 25, 2010 and February 2, 2011 decision approving an attorney's fee of \$900.00. The evidence of record does not establish that OWCP abused its discretion with regard to this matter. Counsel provided OWCP with a detailed list of the services provided in representation of appellant and the amount of time he spent on each type of service.⁸

³ *Regina G. Jackson*, 41 ECAB 321, 325 (1989); *Charles A. Mikalaynas*, 40 ECAB 1277, 1279-80 (1989); *William Lee Gargus*, 25 ECAB 187, 194 (1974).

⁴ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁵ 20 C.F.R. § 10.703(a)(i).

⁶ *Id.* at § 10.703(c).

⁷ *Id.*

⁸ OWCP's regulations provide that a fee request should include a description of the representative's hourly rate, the number of hours worked, the work performed during the hours identified and the total amount charged for the representation (excluding administrative costs); *see* 20 C.F.R. § 10.703(a)(i).

Appellant submitted an October 17, 2010 statement requesting that OWCP reduce the October 22, 2010 attorney's fee request. He has argued, but has not shown, that his attorney did not render services on May 24, 2010. While appellant submitted time sheets showing that he worked on May 24, 2010 from 8:45 a.m. to 2:05 p.m., the evidence of record does not establish that the services listed by his attorney were not provided on that day. Where the representative lists the time devoted to each task, his word is generally entitled to considerable weight. Unless OWCP can demonstrate by clear and convincing evidence that the representative did not, in fact, spend the time alleged it must accept as given the figures that he reports.⁹ The record in the present case does not contain clear and convincing evidence that counsel did not work on May 24, 2010 and the amounts of time listed for the various services do not appear inordinate.

CONCLUSION

The Board finds that OWCP did not abuse its discretion by approving an application for attorney's fees in the amount of \$900.00.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 2, 2011 and October 25, 2010 are affirmed.

Issued: February 23, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *V.T.*, 58 ECAB 133 (2006); see also *Alvin T. Groner, Jr.*, 47 ECAB 588, 590 (1996); *Cf. C.H.*, Docket No. 10-987 (issued March 22, 2011).