United States Department of Labor Employees' Compensation Appeals Board

S.B., attorney for W.A., Appellant)	
and)	Docket No. 14-271 Issued: June 3, 2014
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION,)	issued. Guile 3, 2014
Atlanta, GA, Employer)	
Annoqueuros	,	Case Submitted on the Record
Appearances: Steven E. Brown, Esq., for the appellant		Case Submitted on the Record
Office of Solicitor, for the Director		

ORDER REMANDING CASE

Re: Attorney's Fee

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge COLLEEN DUFFY KIKO, Judge ALEC J. KOROMILAS, Alternate Judge

On November 20, 2013 appellant, through his attorney, filed an application for review of an August 22, 2013 decision of the Office of Workers' Compensation Programs regarding his application for attorney fees for services performed before OWCP. The Board assigned Docket No. 14-271.

On December 31, 2012 appellant's attorney submitted an application for approval of attorney fees claiming that \$340.50 in fees were due to him. Appellant did not approve the fees listed in the request. In an August 22, 2013 decision, OWCP approved fees in the amount of \$13.50, indicating that the unapproved portion of the attorney's fee request was for matters not related to appellant's OWCP claim.

Section 10.703(a)(1)(ii) of the Code of Federal Regulations provides 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.² OWCP will review the fee

¹ In mid-1989, OWCP accepted that appellant, then a 49-year-old assistant air traffic manager, sustained major depression due to his work. Appellant received disability compensation on the periodic rolls.

² 20 C.F.R. § 10.703(a).

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 services for a representative of similar background and experience.³

OWCP procedure provides that, when reduction of attorney's fees is proposed, it will issue a letter to the representative explaining the reasons for the proposed fee reduction and advise him or her to submit evidence or argument against the reduction within 30 days of the letter.4

In the present case, OWCP approved only a portion of the attorney's fee request, but it did not provide the attorney an opportunity to submit evidence or argument against the reduction in approved fees. As it did not follow its own procedure, its August 22, 2013 decision will be set aside and the case remanded for proper application of the relevant procedure.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 22, 2013 be set aside and the case remanded for further action in conformance with this order of the Board to be followed by an appropriate decision.

Issued: June 3, 2014 Washington, DC

> Patricia Howard Fitzgerald, Acting Chief Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board

 $^{^{3}}$ Id. at § 10.703(c).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Representatives' Services*, Chapter 2.1200.6g (June 2012); see K.C., Docket No. 06-2130 (issued July 24, 2007); Arthur B. Cole, 36 ECAB 349 (1984).