

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TED W. STEGER and DEPARTMENT OF THE TREASURY,
U.S. MINT, Denver, CO

*Docket No. 02-123; Submitted on the Record;
Issued January 2, 2003*

DECISION and ORDER

Re: Attorney's Fee

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 an attorney's fee in the amount of \$3,079.90 for services rendered from June 20, 2000 to February 27, 2001.

On March 29, 2000 appellant, then a 47-year-old machine tool operator, filed an occupational disease claim alleging that he hurt his back due to factors of his federal employment. The Office accepted appellant's claim for a back sprain/strain.

In a letter received by the Office on May 3, 2000, appellant authorized communication with Serge L. Herscovici.

By decision dated August 28, 2000, the Office denied appellant's claim for compensation from March 30, 2000 onwards on the grounds that the medical evidence was insufficient to establish that he was disabled due to his accepted employment injury.

By letter dated September 5, 2000, appellant requested a hearing before an Office hearing representative and noted that Mr. Herscovici was his authorized representative.

On February 27, 2001 Mr. Herscovici submitted a request for approval of an attorney's fee in the amount of \$3,079.90 for 16.21 hours of legal services performed from June 20, 2000 to February 27, 2001.¹ Accompanying the request was a letter dated February 27, 2001, signed by

¹ Mr. Herscovici included estimated time for trial preparation, attendance and review. He represented appellant at the hearing, held on February 28, 2000. In a decision dated May 16, 2001, the hearing representative set aside the Office's August 28, 2000 decision and remanded the case for the Office to refer appellant for a second opinion evaluation on the issue of whether he was totally disabled beginning March 30, 2000 due to his employment injury.

appellant, stating that the Office should approve the fee request. The fee application also contained a signed copy of a retainer agreement dated June 20, 2000.

By decision dated August 28, 2001, the Office approved an attorney's fee in the amount of \$3,079.90 for legal services rendered by Mr. Herscovici.

The Board finds that the Office acted within its discretion in approving an attorney's fee in the amount of \$3,079.90 for legal services performed by Mr. Herscovici from June 20, 2000 to February 27, 2001.

It is not the Board's function to determine the fee for representative services performed before the Office.² That is a function within the discretion of the Office based on the criteria set forth in section 10.703(c)³ and mandated by Board decisions. The Board's sole function is to determine whether the action by the Office constituted an abuse of discretion.⁴

Section 10.703(a) provides that the representative must submit the fee application with an itemized statement showing the number of hours worked at specific tasks, the hourly rate and the total amount charged excluding administrative costs. The application must also include claimant's statement of agreement or disagreement with the amount charged, signed by the claimant.⁵ Section 10.703(a)(2) states that an incomplete application will be returned with no further comment.⁶

In this case, the fee application submitted by appellant's attorney contained a copy of the retainer agreement, an itemized statement of the time allotted on specific tasks, the hourly rate and the total amount charged. Appellant signed a letter dated February 27, 2001 indicating that he had reviewed and approved of the fee request. The Office, therefore, did not abuse its discretion in approving the attorney's fee requested.

On appeal to the Board, appellant argued that he previously paid his attorney \$11,466.51.⁷ A representative who collects a fee before approval by the Office can be prosecuted under 18 U.S.C. § 292 with criminal penalties of a fine for not more than \$1,000.00 or imprisonment not to exceed more than one year or both.⁸ The statutes and regulations applicable to attorney's fees under the Federal Employees' Compensation Act⁹ provide only that

² *Nealy Kimble*, 40 ECAB 482, 485 (1998).

³ 20 C.F.R. § 10.703(c).

⁴ *Francesco C. Veneziani*, 48 ECAB 572, 575 (1997); citing *Russell Thomason*, 35 ECAB 781-82 (1984).

⁵ 20 C.F.R. § 10.703(a)(i)-(ii).

⁶ 20 C.F.R. § 10.703(a)(2).

⁷ It is not clear whether appellant is arguing that he has already paid his attorney for work performed on his case before the Office or for other matters.

⁸ *Eugene F. Carbonneau*, 39 ECAB 392 (1988).

⁹ 5 U.S.C. §§ 8101-8193.

a representative's fee under the Act must be approved in order to be a valid, collectable fee and impose criminal sanctions on a representative who collects a fee without prior approval of the Office. The procedures delineated in the Office's regulations for approval of a representative's fee do not prohibit the Office from approving a fee after a fee has been collected.¹⁰

As noted above, the Board's sole function is to determine whether the action taken by the Office on the matter of the attorney's fee constituted an abuse of discretion. Generally, 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 known facts.¹¹ The Board finds that no such error, unreasonable judgment or contrary actions are evident in the Office's approval in this case of an attorney's fee of \$3,079.90.

The decision of the Office of Workers' Compensation Programs dated August 28, 2001 is affirmed.

Dated, Washington, DC
January 2, 2003

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹⁰ *Id.*

¹¹ *Wilson L. Clow, Jr.*, 44 ECAB 157 (1992).