

FACTUAL HISTORY

On August 13, 2004 Dr. Jerrell E. Woolridge, JD/RA, submitted a request for approval of an attorney's fee in the amount of \$7,000.00 for 76 hours of legal services performed from April 20, 2002 through March 22, 2004. Dr. Woolridge billed his services at \$250.00 per hour for a total amount of \$19,000.00 but indicated that he was only requesting approval of a fee of \$7,000.00. He noted that "the actual hours are 241.75 and if these hours are objected to this time card shall be amended to reflect the true hours." With the fee petition, Dr. Woolridge included a general disclosure form signed by appellant on April 20, 2002 regarding the method of collecting attorney's fees under the Federal Employees' Compensation Act.¹

In a decision dated August 21, 2004, the Office approved an attorney's fee in the amount of \$7,000.00 for legal services performed by Dr. Woolridge from April 20, 2002 through March 22, 2004. The Office approved the fee based on its determination that "the claimant has not contested the reasonableness of the amount of the fee."

By letter postmarked September 21, 2004, appellant requested a review of the written record. She contended that she should not have to pay Dr. Woolridge "any more money" and asserted that the "hourly money documentation he has submitted is exaggerated."

In a decision dated February 2, 2005, the Office denied appellant's request for review of the written record as untimely under section 8124.

LEGAL PRECEDENT -- ISSUE 1

It is not the function of the Board to determine the fee for services performed by a representative of a claimant before the Office. That function is within the discretion of the Office based on the criteria set forth in section 10.703(c) of the Act's implementing regulation,² and mandated by Board decisions. The sole function of the Board on appeal is to determine whether the action of the Office 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(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.⁵ While the regulations provide that a fee application is deemed approved when it is accompanied by a signed statement

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.703(c).

³ *Lucia Reynolds*, 55 ECAB ____ (Docket No. 03-898, issued February 17, 2004).

⁴ *Glen E. Shriener*, 53 ECAB 165 (2001).

⁵ 20 C.F.R. § 10.703(a)(1)(ii).

indicating the claimant's agreement with the fee,⁶ the regulations do not specifically provide for approval when a claimant fails to contest a fee application.⁷ When a fee application has been disputed, the Office 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.⁸ After the claimant has been afforded a reasonable time to respond to the request, the Office will then proceed to review the fee application.⁹ Pursuant to section 10.703(c), when a fee is in dispute, the Office will 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.¹⁰

ANALYSIS -- ISSUE 1

In this case, appellant did not submit a statement either approving or disproving Dr. Woolridge's fee request. Prior to reviewing the fee request, the Office should have provided appellant with a copy of Dr. Woolridge's fee application and afforded her a reasonable period to comment and provide supporting evidence if she so chose.¹¹ There is no evidence of record that this was done. The Office approved the requested fee of \$7,000.00 for services provided from April 20, 2002 through March 22, 2004 without considering any of the factors enumerated in section 10.703(c). The Office stated, "This fee has been approved because the claimant has not contested the reasonableness of the amount of the fee." The Board has held, however, that absent appellant's written agreement to the fee, the regulations do not authorize the Office to approve a fee application without first determining whether the fee "is substantially in excess of the value of services received."¹² Consequently, the Board finds that the Office abused its discretion and the case must be remanded to the Office to consider the attorney's fee application according to the applicable regulatory procedures.¹³

CONCLUSION

The Board finds that the Office abused its discretion in approving Dr. Woolridge's fee petition.

⁶ 20 C.F.R. § 10.703(b).

⁷ See *Gerald A. Carr*, 55 ECAB ____ (Docket No. 03-2257, issued January 8, 2004).

⁸ *Id.*

⁹ *Id.*

¹⁰ 20 C.F.R. § 10.703(c).

¹¹ See *Lucia Reynolds*, *supra* note 3; see also, *Gerald A. Carr*, *supra* note 7.

¹² See *Gerald A. Carr*, *supra* note 7.

¹³ In view of the Board's disposition of the attorney fee issue, the issue of whether the Office properly denied appellant's request for a review of the written record is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 2, 2005 and August 21, 2004 are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 16, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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