

## PART XI

### ATTORNEY FEES

#### A. BOARD REVIEW OF ATTORNEY FEE AWARDS MADE BELOW

##### 5. JURISDICTIONAL ISSUES

Inasmuch as counsel must request separate approval of a fee request at each level of the proceedings, the petition must identify with some specificity the time spent at each level. As a general rule, the date of the transmittal letter transferring a claim from the district director to the Office of Administrative Law Judges may provide the clearest indication of the jurisdictional cutoff date for this purpose. Where other factors undermine the reliability of the transmittal letter as an indicator, the test is whether the work performed was relevant to the proceedings before the administrative law judge. If the work was reasonably integral to the preparation for hearing, then the administrative law judge may provide for its compensation. *Matthews v. Director, OWCP*, 9 BLR 1-184 (1986).

The Department of Labor (DOL) may approve an attorney fee for work performed before the Social Security Administration (SSA) in connection with a Part B claim which SSA has approved and certified to DOL for payment pursuant to Section 435(a)(2)(A) of the Reform Act, 30 U.S.C. §945(a)(2)(A). *Helmick v. Director, OWCP*, 9 BLR 1-161 (1986). DOL may also provide for the compensation of the time spent by the attorney before SSA performing duties that were reasonably necessary to establishing entitlement before DOL. *Gillman v. Director, OWCP*, 9 BLR 1-7 (1986); *Pritt v. Director, OWCP*, 9 BLR 1-159 (1986); *Parker v. Director, OWCP*, 12 BLR 1-98 (1987); see also *Lenig v. Director, OWCP*, 9 BLR 1-147 (1986).

#### CASE LISTINGS

[attorney fee awards for mandamus litigation are province of District Court with opportunity to judge quality of representation] *Mitchell v. Director, OWCP*, 2 BLR 1-717 (1979).

[attorney can be paid for time spent on case before claimant appoints representative in writing] *Grimm v. Director, OWCP*, 4 BLR 1-203 (1981); *Miller v. Director, OWCP*, 2 BLR 1-841 (1980).

[district director properly disallowed fee for post-award and post-compensation action]

**Cox v. Director, OWCP**, 7 BLR 1-810 (1985).

[claimant had initiated referral to Office of Administrative Law Judges; services prior to referral reasonably integral to hearing preparation] **Vigil v. Director, OWCP**, 8 BLR 1-99 (1985).

## DIGESTS

The Board held that, while obtaining medical evidence and performing medical and legal research can be compensable services under a Part C claim if work helped establish entitlement, procedural actions taken pursuant to Part B claims, such as preparing and filing briefs, motions, and appeals are not compensable) **Gillman v. Director, OWCP**, 9 BLR 1-7 (1986).

The Board indicated that it may have been error for the district director to disallow time related to claimant's state compensation claim without first determining whether it involved duties that were necessary to secure benefits before DOL. **Lenig v. Director, OWCP**, 9 BLR 1-147 (1986).

The appropriate rationale for determining whether additional services performed prior to the official appointment of a representative are compensable is whether those services were necessary to the establishment of entitlement before the DOL. See generally **Gibson v. Director, OWCP**, 9 BLR 1-149 (1986).

Although the administrative law judge may not have proper jurisdiction of a claim, s/he may still provide for an attorney fee for the time necessary to represent claimant at the hearing following employer's request for hearing. **Boyd v. Jewell Smokeless Coal Co.**, 11 BLR 1-39 (1989).

Only payment for services performed after the district director's denial of the claim may be approved by the administrative law judge. 20 C.F.R. §725.366(a); **Abbott v. Director, OWCP**, 13 BLR 1-15 (1989); **Vigil v. Director, OWCP**, 8 BLR 1-99 (1985); see also **Cox v. Director, OWCP**, 7 BLR 1-810 (1985).

Where a fee petition is granted in full without a request for enhancement due to delay, and no request for reconsideration or appeal regarding the fee petition is taken within the prescribed thirty-day period, the order becomes final. Thus, the administrative law judge has no jurisdiction to consider counsel's motion for enhancement due to delay, which was submitted to the administrative law judge two years later. Such a motion is tantamount to a collateral attack on a final order. Therefore, enhancement is improper in these circumstances. **Bennett v. Director, OWCP**, 17 BLR 1-72 (1992).

