

PART XI
ATTORNEY FEES

A. BOARD REVIEW OF ATTORNEY FEE AWARDS MADE BELOW

6. REQUIREMENTS FOR FEE PETITION

Section 725.366(a) requires counsel to submit application for a fee supported by a "complete statement of the extent and character of the necessary work done" and by an indication of the professional status of the person performing such work and his/her customary billing rate. 20 C.F.R. §725.366(a). The application shall also include a listing of reasonable, un-reimbursed expenses, including those for travel, incurred by the representative or an employee of a representative in establishing the claimant's case. Each fee petition should contain a description of other fees requested, charged, or received for services rendered to the claimant before any court or agency in connection with a related matter. 20 C.F.R. §725.366(a).

The burden of proof is on claimant's counsel to provide a complete statement of the extent and character of the necessary work done, such as would permit a finding by the district director that necessary work was performed. ***Ball v. Director, OWCP***, 7 BLR 1-617, 1-619 (1984).

Claimant's counsel must demonstrate the necessity of association with a co-counsel. The adjudication officer must make explicit finding as to whether counsel met this burden prior to awarding an attorney fee to both co-counsel. ***Simmons v. Director, OWCP***, 7 BLR 1-175 (1984); ***Kovaly v. Director, OWCP***, 7 BLR 1-383 (1984). The services of a paralegal are compensable pursuant to the Section 725.366(a), but the fee petition must indicate the professional status of each individual for whom compensation is sought. ***Cox v. Director, OWCP***, 7 BLR 1-810 (1985).

CASE LISTINGS

[if co-counsel necessary, its abuse of discretion to deny all compensation for communication between counsel; standard is whether work reasonably necessary to establish entitlement] ***Charles v. Director, OWCP***, 3 BLR 1-80 (1981).

[district director's disallowance of co-counsel hours affirmed based on finding that services performed by co-counsel duplicative] ***Murphy v. Director, OWCP***, 6 BLR 1-

333 (1983).

[disallowance will be affirmed where counsel failed to meet burden of establishing necessity of co-counsel even if adjudicator erred in not sufficiently explaining disallowance] **Burns v. Director, OWCP**, 6 BLR 1-473 (1983); **Dombrowski v. Director, OWCP**, 6 BLR 1-468 (1983).

[fee award remanded to district director for reconsideration whether office memos, outlining possible action not later taken, meets test for reasonable necessity outlined in **Marcum v. Director, OWCP**, 2 BLR 1-894 (1980)] **Kovaly v. Director, OWCP**, 7 BLR 1-383 (1984).

[counsel must demonstrate necessity of association with co-counsel; adjudicator must make explicit finding whether counsel met burden to award fee to both] **Simmons v. Director, OWCP**, 7 BLR 1-175 (1984); **Kovaly v. Director, OWCP**, 7 BLR 1-383 (1984).

[test for whether work necessary is whether attorney, at time work performed, could reasonably regard work as necessary to establish entitlement] **Lanning v. Director, OWCP**, 7 BLR 1-314 (1984); see also **Kovaly v. Director, OWCP**, 7 BLR 1-383 (1984).

[where adjudicator finds co-counsel unnecessary, but still awards some time to co-counsel, allowance of fees to co-counsel improper] **Kovaly v. Director, OWCP**, 7 BLR 1-383 (1984).

[disallowance of entries in fee application affirmed where record contained no correspondence from attorney until after benefits awarded, entitlement established without any sign of input by counsel; majority of entries in counsel's fee petition totally lacking in documentation] **Ball v. Director, OWCP**, 7 BLR 1-617, 1-619 (1984).

[paralegal services compensable at Section 725.366(a), but fee petition must indicate professional status of each individual for whom compensation sought; here counsel's mere noting paralegal's status in margin insufficient to meet burden] **Cox v. Director, OWCP**, 7 BLR 1-810 (1985).

DIGESTS

Counsel must raise the enhancement for delay factor at the time the fee petition is filed since counsel is precluded from raising the issue for the first time on appeal. **Goodloe v. Peabody Coal Co.**, 19 BLR 1-91 (1995); see **Bennett v. Director, OWCP**, 17 BLR 1-72, 1-73-74 (1992); **Mitchell v. United States Steel Corp.**, 7 BLR 1-68, 1-70 (1984); **Senick v. Keystone Coal Mining Co.**, 5 BLR 1-395, 1-398 (1982); **Taylor v. 3D Coal**

Corp., 3 BLR 1-350, 1-355 (1981).

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