

PART XI
ATTORNEY FEES

A. BOARD REVIEW OF ATTORNEY FEE AWARDS MADE BELOW

7. ISSUES ON APPEAL OF ATTORNEY FEE AWARDS

The Board's review of attorney fee awards made below occurs in two situations: where employer or the Director challenges counsel's entitlement to a fee or the amount of the fee and where claimant's counsel objects to a substantial reduction in requested attorney fees. See also Desk Book, Part XI.A.9. *supra*, for a discussion of the general liability issue. The adjudication officer must discuss and apply the regulatory criteria at Section 725.366 in determining the fee award due, if any. See **Lenig v. Director, OWCP**, 9 BLR 1-147 (1986). The attorney fee becomes payable once an order awarding benefits is final, *i.e.*, after resolution of any appeal or the expiration of time for appeal. **Temple v. Big Horn Coal Co.**, 7 BLR 1-573 (1984).

a. Opposition to Attorney Fees

CASE LISTINGS

[adjudicator's failure to address specific objections to fee petition is violation of the APA; requires remand] **Ovies v. Director, OWCP**, 6 BLR 1-689 (1983).

[adjudicator must provide explanation supporting determination; it need not include discussion of all regulatory criteria listed in applicable regulation, but will be sufficient if it reasonably addresses opposing party's specific objections] **Busbin v. Director, OWCP**, 3 BLR 1-374 (1981).

DIGESTS

When the amount of an attorney fee is appealed to the Board as excessive, the burden is on the challenging party to show that the assessment of the fee is arbitrary, capricious, or an abuse of discretion. **Marcum v. Director, OWCP**, 2 BLR 1-894 (1980); **Jones v. Kaiser Steel Corp.**, 8 BLR 1-339 (1985); **Abbott v. Director, OWCP**,

13 BLR 1-15 (1989).

As previously noted, all objections to a fee petition must be raised prior to the fee award. Otherwise, the opposing party waives any objection and cannot later appeal the fee award. ***Abbott v. Director, OWCP***, 13 BLR 1-15 (1989).

6/95