

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT LAI, SR., and U.S. POSTAL SERVICE,
POST OFFICE, Paterson, N.J.

*Docket No. 96-1186; Submitted on the Record;
Issued June 15, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion in approving an attorney fee of \$1,380.00.

Appellant's representative before the Office, James D. Muirhead, Attorney at Law, of Hackensack, New Jersey, requested approval of a fee in the amount of \$1,800.00 for 10.6 hours of work performed at an hourly rate of \$200.00 from January 7, 1994 through May 1, 1995. Although he indicated that 10.6 hours at \$200.00 per hour amounted to \$2,120.00, he requested approval of a fee of only \$1,800.00.

In its February 15, 1996 decision, the Office found that the case was entirely routine and required no legal argument to be presented, no appearance before a court and no special qualifications or expertise to bring the issue of the schedule award to conclusion. The Office concluded that the case did not support charges beyond the customary \$150.00 charged for similar work before the Office. The Office also disallowed charges for inquiries to, reviews of information from and discussions with the office of Senator William Bradley, as well as the transmittal of information received from that office. The Office disallowed these charges on the grounds that such services constituted "work performed before any other State or Federal agency" under 20 C.F.R. § 10.145(e)(1). The Office approved a fee of \$1,380.00.

The Board finds that the Office did not abuse its discretion.

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 lies within the discretion of the Office based on the criteria set forth in section 10.145 of Title 20 of the Code of Federal

Regulations.¹ 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.²

Because the Office properly considered the criteria set forth in section 10.145, when approving an hourly rate of \$150.00, the Board finds that the Office properly exercised its discretion in the matter. Further, the Board finds that the Office properly disallowed charges relating to communication with Senator Bradley's office. In the case of *Thomas DaGrossa*,³ the Board, citing 20 C.F.R. § 10.145(e)(1), noted that the Office had properly exercised its discretion in finding that a fee was not allowable for work before another agency *or for correspondence with congressional offices* (emphasis added). Similarly, the Board finds in the present case that communications with a congressional office constitute "work performed before any other State or Federal agency" and that the Office, therefore, properly exercised its discretion in disallowing such items.

The February 15, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 15, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

¹ 20 C.F.R. § 10.145.

² *Roy Goldman*, 32 ECAB 1569 (1981) (the Board will not interfere with or set aside a determination by the Office of a fee for representative services unless the evidence of record supports that the determination made by the Office represents an abuse of discretion).

³ 49 ECAB ____ (Docket No. 96-1010, issued March 4, 1998).