

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DORIS M. RELYEA and DEPARTMENT OF THE NAVY,  
PEARL HARBOR NAVAL SHIPYARD, Pearl Harbor, Hawaii

*Docket No. 96-2470; Submitted on the Record;  
Issued September 17, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs abused its discretion in approving an attorney's fee of \$1,497.30.

On September 17, 1992 Elbridge W. Smith, appellant's representative before the Office, submitted an itemized statement requesting approval by the Office of a fee in the amount of one thousand four hundred ninety seven dollars and thirty cents (\$1,497.30)<sup>1</sup> for 11.50 hours of work performed from October 26, 1990 through February 5, 1992 at a billing rate of one hundred and twenty-five dollars (\$125.00) per hour. Mr. Smith submitted another request for approval of a fee in a letter dated June 1, 1995. Appellant's claim has been accepted for post-traumatic stress disorder and major depression on January 17, 1992.

In a letter dated August 2, 1995, appellant contested Mr. Smith's claim for attorney fees and submitted supporting documentation. Appellant states that she has already paid Mr. Smith approximately \$3,000.00 in attorney fees and should not be required to pay him any additional fees.

By decision dated August 15, 1995, the Office approved Mr. Smith's fee request for the amount of \$1,497.30 for legal services rendered from October 26, 1990 through February 5, 1992 on the grounds that such fee was reasonably commensurate with the actual necessary work performed in representing appellant before the Office. In the findings of fact, the Office noted that appellant "has contested the reasonableness of the amount of the fee."

By letter dated September 1, 1995 appellant requested an oral hearing, stating that she disagrees with the decision granting her attorney's request for legal fees.

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<sup>1</sup> This fee includes a gross excise tax on professional income required by law in Hawaii.

A hearing was held on February 20, 1996 at which appellant was allowed to testify and submit evidence. Appellant testified that she had already paid Mr. Smith \$3,000.00 and did not think she should have to pay him any additional funds. Appellant also testified that Mr. Smith put this money into an escrow account.

In a decision dated May 3, 1996, an Office hearing representative affirmed the Office's August 15, 1995 decision.<sup>2</sup>

The Board finds that there was no abuse of discretion by the Office in awarding appellant's representative a fee in the amount of 1,497.30. The hearing representative found, after a review of the case record, that the Office properly awarded Mr. Smith a fee request of \$1,497.30 for legal services performed from October 26, 1990 through February 5, 1992. The hearing representative also noted that as appellant "has already paid more than \$3,000.00 to Mr. Smith, it would seem that she has already taken care of her debt to him." The hearing representative then noted that the Office does not get involved in disputes regarding the collecting of fees or any monies involved and that the Office could not get involved in the current dispute between appellant and Mr. Smith over whether she owes any additional money.

The Board finds that the Office did not abuse its discretion in approving an attorney fee of \$1,467.30.

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 is the function 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.<sup>3</sup> This section provides in pertinent part:

"The fee approved by the Office will be determined on the basis of the actual necessary work performed, and will generally include, but are not limited to, the following factors:

- (1) Usefulness of the representative's services to the claimant.
- (2) The nature and complexity of the claim.
- (3) The actual time spent on development and presentation of the claim.
- (4) The amount of compensation accrued and potential future payments.
- (5) Customary local charges for similar services.
- (6) Professional qualifications of the representative."

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<sup>2</sup> There is a typographical error in the hearing representative's decision on the amount of attorney fees. The hearing representative noted a fee of "\$1,497.00" while the Office authorized a fee of "\$1,497.30."

<sup>3</sup> 20 C.F.R. § 10.145.

The record shows that, in approving the fee of \$1,497.30 the Office took into consideration the criteria set forth in 20 C.F.R. § 10.145 pertaining to fees for representative services. There is no indication that the attorney did not actually devote to the case the 12.50 hours for which he sought approval,<sup>4</sup> and the amounts of time provided for each listed service were not inordinate.<sup>5</sup> On appeal, appellant contests that she should not be required to pay Mr. Smith any additional funds. As the hearing representative correctly stated, the Office does not get involved in any disputes over the collection of attorney fees or money already paid. The Board finds that the Office hearing representative properly applied the factors enumerated in 20 C.F.R. § 10.145 in finding that the evidence supported an attorney's fee in the amount of \$1,497.30.

The decisions of the Office of Workers' Compensation Programs dated May 3, 1996 and August 15, 1995 are hereby affirmed.

Dated, Washington, D.C.  
September 17, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>4</sup> *Rosa M. Thomas-Hunter*, 42 ECAB 500 (1991).

<sup>5</sup> *See Charles A. Mikalaynas*, 40 ECAB 1277 (1989).