

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of LOIS J. EPPERSON and U.S. POSTAL SERVICE,  
EASTSIDE POST OFFICE, Kingsport, Tenn.

*Docket No. 97-1943; Submitted on the Record;  
Issued April 7, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in reducing the requested fee of appellant's attorney to \$961.20.

By letter dated October 11, 1995, appellant's attorney, Michael A. Faulk, of Church Hill, Tennessee, requested approval of an attorney's fee for services rendered from February 21 through October 10, 1995. Attached to the letter was an itemized list showing the dates of services and the amount of time spent, a total of 14.45 hours. This list included several amounts for mileage, medical consultation and records, and other costs advanced to appellant and showed a "Billable" total of \$961.20.

On November 7, 1996 the Office approved Mr. Faulk's fee request in the amount of \$961.20.

On May 8, 1997 Mr. Faulk wrote to the Office explaining that the amount of the fee he was requesting was not specified in his fee application, but the total amount of time expended was 15.45 hours, and his normal hourly rate was \$150.00. Thus, his actual fee would have been \$2,317.50.

Mr. Faulk explained that appellant agreed to pay him the hourly rate or one third of the amount of compensation she received, whichever was greater. Because appellant received \$8,701.46, one third of which amounted to \$2,971.48, he was requesting that amount as a fee. Mr. Faulk added that the \$921.20 figure represented costs advanced to appellant.

With his letter Mr. Faulk included an additional application dated October 30, 1996 seeking a total fee of \$3,207.68, which consisted of \$236.20 in costs and the \$2,971.48. The Office responded to Mr. Faulk's letter on June 26, 1997 and also sent his May 8, 1997 letter to the Board as requested.

The Board finds that this case is not in posture for decision.

It is not the function of the Board to determine the fee for services performed by a representative of a claimant before the Office.<sup>1</sup> That function is within the discretion of the Office based on the criteria set forth in section 10.145.<sup>2</sup> The Board's sole function is to determine whether the Office's award of the attorney's fee constituted an abuse of discretion.<sup>3</sup>

The Board has frequently stated that it will not interfere with or set aside a fee decision by the Office unless the evidence of record demonstrates that the Office abused its discretion.<sup>4</sup> Generally, an abuse of discretion can be shown only through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>5</sup>

Section 10.145(d) provides that the attorney shall arrange for his client to review the fee request and comment on the services rendered and the reasonableness of the fee. The regulation adds that the client's written comments "should accompany" the fee application.<sup>6</sup> The Federal (FECA) Procedure Manual states that any fee request should include an opinion from the client on the reasonableness and appropriateness of the fee requested. Thus, the attorney must show the client the entire fee application, including the itemized list of services.<sup>7</sup>

In this case, the Board finds manifest error in the Office's approval of a fee of \$921.20.<sup>8</sup> This figure is not the total of the 14.45 hours billed, multiplied by Mr. Faulk's hourly rate of \$150.00. Mr. Faulk indicated that the figure represented costs advanced to appellant, but the amounts noted in the fee application do not add up to \$921.20. (They total \$924.70) He later indicated that appellant was charged only \$236.20 in costs.

Further, as the Office pointed out, contingency fee agreements are not permitted under the Federal Employees' Compensation Act.<sup>9</sup> Mr. Faulk may be paid a fee only for the hours he

---

<sup>1</sup> See *Edna M. Davis*, 42 ECAB 728, 734 (1991).

<sup>2</sup> 20 C.F.R. § 10.145(b) provides the following criteria for approval of representative fees: "(b) 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."

<sup>3</sup> *Regina G. Jackson*, 41 ECAB 321, 325 (1989).

<sup>4</sup> *John E. Harman*, 41 ECAB 169, 174 (1989).

<sup>5</sup> *Daniel J. Perea*, 42 ECAB 214, 220 (1990).

<sup>6</sup> 20 C.F.R. § 10.145(d).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fees for Representatives' Services*, Chapter 2.1200.5(a) (December 1994).

<sup>8</sup> See *John E. Harman*, *supra* note 4 at 175 (remanding the case because the Office abused its discretion in approving an hourly rate without first considering local charges for similar services).

<sup>9</sup> 20 C.F.R. § 10.145(e)(2).

actually worked on appellant's case, including the 0.40 hours he billed on October 11 and 22, 1996 for conferences with appellant. Thus, he is not entitled to one third of appellant's disability compensation.<sup>10</sup>

Finally, while appellant approved the initial fee application submitted by Mr. Faulk, her statement is undated and appears to precede the additional fees charged by Mr. Faulk in 1996. Therefore, an updated statement should be obtained from appellant approving Mr. Faulk's revised fee application.

The November 7, 1996 decision of the Office of Workers' Compensation is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.  
April 7, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

---

<sup>10</sup> See *Russell Thomason*, 35 ECAB 781, 782 (1984) (finding that Office regulations governing approval of attorney's fees expressly prohibit recognition of any contingency arrangements).