

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEB McKEAN and U.S. POSTAL SERVICE,  
POST OFFICE, Longmont, Colo.

*Docket No. 97-1530; Submitted on the Record;  
Issued February 3, 1999*

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DECISION and ORDER  
Re: Attorney's Fees

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying approval of attorney's fees of \$600.00.

In the present case, appellant filed a claim for bilateral elbow tendinitis causally related to her federal employment. The claim was accepted for bilateral lateral epicondylitis and right shoulder strain. By decision dated April 24, 1996, the Office determined that appellant was not entitled to continuation of pay.

By letter dated September 25, 1996, Mr. Timothy Quinn, an attorney, requested approval of fees amounting to \$600.00. He enclosed an itemized list of the services rendered. In a decision dated February 14, 1997, the Office denied approval of the requested fees, noting that there was no signed authorization of representation in the record.

The Board has reviewed the record and finds that the Office did not abuse its discretion in denying approval of attorney's fees in this case.

A claimant may authorize an individual to represent him in any proceeding under the Federal Employees' Compensation Act.<sup>1</sup> 20 C.F.R. § 10.142 provides:

“Any claimant may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the claimant or his or her legal guardian and shall be sent to the Office.”

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<sup>1</sup> 5 U.S.C. § 8127.

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 is within the discretion of the Office based on the criteria set forth in section 10.145 of the Office's regulations.<sup>2</sup> The Board's sole function is to determine whether the action taken by the Office on the matter of attorney's fees constituted an abuse of discretion.<sup>3</sup>

In the present case, there is no indication that appellant provided written authorization of representation by Mr. Quinn prior to the February 14, 1997 Office decision.<sup>4</sup> There is also no indication of appointment on the record at a hearing.<sup>5</sup> The Board therefore finds that Mr. Quinn had not been established as a duly authorized representative under the Act and its implementing regulations. Accordingly, the Board finds no abuse of discretion in denying the approval of attorney's fees in this case.

The decision of the Office of Workers' Compensation Programs dated February 14, 1997 is affirmed.

Dated, Washington, D.C.  
February 3, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>2</sup> 20 C.F.R. § 10.145.

<sup>3</sup> *Arthur Sims*, 46 ECAB 880, 888 (1995).

<sup>4</sup> The Board is limited to review of evidence that was before the Office at the time of its February 14, 1997 decision. 20 C.F.R. § 501.2(c).

<sup>5</sup> There is in fact no evidence of prior contact between Mr. Quinn and the Office regarding this claim.