

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDRES A. MOREIRA and U.S. POSTAL SERVICE,
POST OFFICE, Hackensack, NJ

*Docket No. 97-2637; Submitted on the Record;
Issued July 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by approving an attorney's fee of \$6,606.50 for services rendered during the period March 17, 1992 to July 6, 1996.

The Board finds that the Office did not abuse its discretion by approving an attorney's fee of \$6,606.50 for services rendered during the period March 17, 1992 to July 6, 1996.

It is not the Board's function to determine the fee for representative services performed before the Office. That is a function within the discretion of the Office based on the criteria set forth in 20 C.F.R. § 10.145 and mandated by Board decisions. The Board's sole function is to determine whether the action by the Office constituted an abuse of discretion.¹ The Board has frequently stated that it 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.² Generally, an abuse of discretion is shown 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.³

¹ *Regina G. Jackson*, 41 ECAB 321, 325 (1989); *Charles A. Mikalaynas*, 40 ECAB 1277, 1279-80 (1989); *William Lee Gargus*, 25 ECAB 187, 194 (1974).

² *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728, 734-35 (1991).

³ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The criteria governing the approval of fees for representative's services are provided in 20 C.F.R. § 10.145(b), which provides the following:

“(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.”

In the present case, the Office considered the relevant criteria in its January 29, 1997 decision approving an attorney's fee of \$6,606.50. The evidence of record does not establish that the Office abused its discretion with regard to this matter. Appellant's attorney provided the Office a detailed list of the types of services provided to appellant and the amount of time he spent on each type of service.⁴ The Office properly deducted \$1,155.00 from the fee request of appellant's attorney for 7.7 hours he spent working on appellant's case before the Board. The Office's regulations provide that it will not approve fees for work performed in connection with any other state or federal agency or court, including the Board.⁵

Appellant has alleged that the services provided by his attorney were not useful. Appellant did not, however, provide adequate evidence in support of this contention.⁶ The Board notes that after appellant's attorney began working on the case appellant's compensation was retroactively reinstated to the time it was terminated on October 7, 1992 for refusal to accept a suitable job offer. Appellant's claim is complicated in nature and has required extensive evaluation of medical evidence and consideration of various issues concerning the suitability of positions offered by the employing establishment.

For these reasons, the Office did not abuse its discretion by approving an attorney's fee of \$6,606.50.

The decision of the Office of Workers' Compensation Programs dated January 29, 1997 is affirmed.

⁴ The Office's regulations provide that a fee request should include a description of each service rendered with the amount of time spent on each type of service; *see* 20 C.F.R. § 10.145(c)(2).

⁵ *See* 20 C.F.R. § 10.145(e)(1).

⁶ *See Alvin T. Groner, Jr.*, 47 ECAB 588, 590 (1996).

Dated, Washington, D.C.
July 23, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member