

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LIZABETH M. KAMAKA and U.S. POSTAL SERVICE,
POST OFFICE, Santa Ana, CA

*Docket No. 00-720; Submitted on the Record;
Issued March 1, 2001*

DECISION and ORDER

Re: Attorney's Fee

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs abused its discretion by approving an attorney's fee in the amount of \$1,200.00 for services rendered from December 7, 1997 to September 21, 1999.

On October 4, 1999 Michael R. Wadsworth, Esquire, submitted a request for approval of an attorney's fee in the amount of \$1,200.00 for 13.30 hours of legal services he performed from December 7, 1997 to September 21, 1999. The request was received by the Office on October 19, 1999. Accompanying the request was a form letter, signed by appellant, which was entitled "[a]uthorization for [a]ttorneys [f]ees." The letter stated that appellant had reviewed Mr. Wadsworth's billing for fees regarding her disability case, that she authorized his attorney's fees, and that she believed the fee list accurately reflected the legal work Mr. Wadsworth performed on the case.

By decision dated November 24, 1999, the Office approved an attorney's fee in the amount of \$1,200.00 for legal services performed by Mr. Wadsworth as reasonably commensurate with the services performed.

In his appeal to the Board, Mr. Wadsworth contends that he is entitled to an attorney's fee in the amount of \$3,500.00, which he argues is more in accordance with the amount of appellant's award.

The Board finds that the Office acted within its discretion by approving an attorney's fee in the amount of \$1,200.00 for legal services performed by Mr. Wadsworth from December 7, 1997 to September 21, 1999.

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 Title 20 of the Code of Federal Regulations and mandated by Board decisions. The sole function of the Board on appeal is to determine whether the action

of the Office constituted an abuse of discretion.¹ Section 10.703(c) provides in pertinent part that the Office will determine whether the amount of the fee is substantially in excess of the value of services received by looking at the following factors: (i) Usefulness of the representative's services; (ii) The nature and complexity of the claim; (iii) The actual time spent on development and presentation of the claim; and (iv) Customary local charges for similar services.

The Office considered the relevant criteria in its decision approving the requested fee. The only documentation of Mr. Wadsworth's services consisted of those listed in his October 4, 1999 fee application. Mr. Wadsworth did not submit any other attorney fee requests to the Office for its consideration prior to the November 24, 1999 decision. The Office noted that appellant had not contested the reasonableness of the fee amount. In fact, appellant signed an authorization letter indicating that she had reviewed and approved the fee request, and that she believed the fee list accurately reflected the legal work Mr. Wadsworth performed in the case.² Thus, there is no evidence in the record that the Office abused its discretion in approving the requested fee.

Appellant's attorney asks the Board on appeal to approve a fee of \$3,500.00 because the "award" in this case was almost \$100,000.00. The Board has no power to approve a fee for services performed before the Office. Further, the Board notes that the Federal Employees' Compensation Act contains no provision for contingency fees.³

The decision of the Office of Workers' Compensation Programs dated November 24, 1999 is affirmed.

Dated, Washington, DC
March 1, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹ *Alvin T. Groner, Jr.*, 47 ECAB 588 (1996); *Azalee L. McCoy*, 39 ECAB 786 (1988); *Edward Snider*, 39 ECAB 1268 (1988).

² See 20 C.F.R. § 10.703(b).

³ See *Arthur B. Cole*, 36 ECAB 349 (1984); 20 C.F.R. § 10.700-03 (1999).