

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VONCILE WILLIAMS and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, New York, NY

*Docket No. 02-920; Submitted on the Record;
Issued August 26, 2002*

DECISION and ORDER

Re: Attorney's Fee

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs abused its discretion in granting an attorney's fee in the amount of \$5,420.00.

Appellant filed a claim on March 1, 2001 after she hurt her neck, back and right shoulder in a required self-defense class on February 7, 2001. On April 6, 2001 the Office requested additional information in support of her claim.¹ On April 17, 2001 appellant's representative filed a notice of his representation along with a signed copy of his retainer agreement.

On May 16, 2001 the Office denied appellant's claim on the grounds that she had failed to submit medical evidence to establish that she sustained any work-related injuries from the February 7, 2001 incident. Appellant's attorney requested reconsideration and submitted additional medical evidence as well as a lengthy brief presenting legal argument.

On December 19, 2001 the Office denied appellant's request on the grounds that the evidence submitted was immaterial and, therefore, insufficient to warrant merit review.² The Office noted that the evidence addressed an injury on May 6, 1999 and made no mention of any February 7, 2001 incident.

¹ Appellant responded that she had two previous on-the-job injuries while undergoing weapons qualification training on May 6 and December 20, 1999. She was also injured in a work-related automobile accident, in March 1989.

² Appellant filed her appeal with the Board on March 8, 2002 but did not contest the December 19, 2001 decision denying her claim. Therefore, the merits of this decision are not before the Board; *see* 20 C.F.R. § 501.3(c) (application for review shall contain the date of the decision being appealed).

On December 11, 2001 appellant's attorney informed the Office that he had completed his representation of appellant and requested approval of a fee of \$5,420.00 for services rendered at a rate of \$200.00 an hour for 27.10 hours from March 29 through November 15, 2001.

On January 18, 2002 the Office approved the fee requested by appellant's attorney, noting that appellant had not contested the reasonableness of the amount sought.

The Board finds that the Office abused its discretion in approving an attorney's fee of \$5,420.00.

It is not the Board's function to determine the fee for representative services performed before the Office.³ That is a function within the discretion of the Office based on the criteria set forth in section 10.703(c)⁴ and mandated by Board decisions. The Board's sole function is to determine whether the action by the Office constituted an abuse of discretion.⁵

Section 10.703(a) provides that the representative must submit the fee application with an itemized statement showing the number of hours worked at specific tasks, the hourly rate and the total amount charged excluding administrative costs. The application must also include the claimant's statement of agreement or disagreement with the amount charged, signed by the claimant.⁶ Section 10.703(a)(2) states that an incomplete application will be returned with no further comment.⁷

In this case, the fee application submitted by appellant's attorney on December 11, 2001 contained copies of the escrow and retainer agreements, an itemized "time analysis," and a copy of a bill to appellant. However, there was no statement from appellant on whether she agreed or disagreed with the amount charged. While the record shows that appellant's attorney sent such a statement to her, along with a self-addressed envelope, there is no evidence that appellant signed such a statement or that the attorney submitted it, as required.⁸

Inasmuch as the Office approved a fee application that was incomplete, the Board finds that the Office abused its discretion. The Board will thus remand the case for the Office to consider appellant's objections to her attorney's fee application.

³ *Nealy Kimble*, 49 ECAB 482, 485 (1998).

⁴ 20 C.F.R. § 10.703(c).

⁵ *Francesco C. Veneziani*, 48 ECAB 572, 575 (1997), citing *Russell Thomason*, 35 ECAB 781-82 (1984).

⁶ 20 C.F.R. § 10.703(a)(i)-(ii).

⁷ 20 C.F.R. § 10.703(a)(2).

⁸ A January 17, 2002 letter from appellant objecting to the reasonableness of the attorney's fee request was not received by the Office until January 29, 2002 and was, therefore, not reviewed in its January 18, 2002 decision approving the fee. Thus, the Board has no jurisdiction over this evidence. See 20 C.F.R. § 501.2(c); *Thomas W. Stevens*, 50 ECAB 288, 289 n.2 (1999) (finding that the Board is precluded from reviewing evidence not before the Office at the time it issued its decision).

The January 18, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
August 26, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member