

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS LOPEZ and DEPARTMENT OF JUSTICE,
U.S. MARSHALS SERVICE, Albuquerque, NM

*Docket No. 01-1896; Submitted on the Record;
Issued March 11, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by approving an attorney's fee in the amount of \$2,329.76 for services rendered from March 23, 1999 to June 19, 2000.

On August 1, 2000 Gordon Reiselt, Esquire, submitted a request for approval of an attorney's fee in the amount of \$2,737.77 for 17.40 hours of legal services he performed from March 23, 1999 to June 19, 2000.

By letter dated November 14, 2000, the Office received a letter from appellant contesting the amount of attorney's fees requested by Mr. Reiselt. Appellant stated that Mr. Reiselt had not been his attorney for some time. He said that he met with Mr. Reiselt on only one occasion and paid him \$1,765.00, plus an additional \$200.00 on May 14, 2000 and \$200.00 on July 7, 2000. He indicated that Mr. Reiselt was very difficult to communicate with because there was no direct contact between him and Mr. Reiselt. He stated that Mr. Reiselt did not have an office and had to meet with appellant and his witnesses at his own employing establishment or at a nearby restaurant. He also indicated that the fee requested for Edward Daniel of \$150.00 per hour was inappropriate, based on the fact that he is not an attorney and his only role in the case was securing a copy of the case record from the district Office. Mr. Reiselt subsequently responded that he inadvertently listed Mr. Daniel as an attorney, but that the fee of \$150.00 per hour was nonetheless appropriate since Mr. Daniel had 20 years of experience under the Federal Employees' Compensation Act.

By decision dated June 8, 2001, the Office approved an attorney's fee in the amount of \$2,329.76 for legal services performed by Mr. Reiselt as reasonably commensurate with the services performed. The Office reduced the fee charged for Mr. Daniel's services from \$150.00 per hour to \$36.13 per hour, thus decreasing the total requested amount from \$2,737.77 to \$2,329.76. The representative appeals the reduced fee to the Board.

The Board finds that the Office acted within its discretion by approving an attorney's fee in the amount of \$2,329.76 for legal services performed by Mr. Reiselt from March 23, 1999 to June 19, 2000.

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 in approving the \$2,329.76 fee. Mr. Reinselt submitted a June 22, 2000 fee application listing all professional services rendered from March 23, 1999 to June 19, 2000, totaling 17.40 hours. Although appellant generally contested the reasonableness of the fee, he did not specifically challenge any of the services listed except for the services rendered by Mr. Daniel. He stated that his attorney was very difficult to communicate with and that he did not have his own office. Appellant specifically disputed the \$300.00 fee for Mr. Daniel noting that he was not an attorney and the only task he performed was obtaining the case record from the district Office. The Office reviewed the task completed by Mr. Daniel and correctly determined that the action of obtaining the case record could have reasonably been performed by a clerk and would not require someone with 20 years of experience or a fee of \$150.00 per hour. The Office correctly recommended that the fee charged for Mr. Daniel's services be reduced from \$150.00 per hour to \$36.13 per hour, the hourly rate of a GS-13 step 10 supervisory claims manager, thereby reducing the total attorney's fee to \$2,329.76. The Office correctly took into account appellant's protest of Mr. Daniel's fee of \$150.00 per hour and reduced it to an appropriate amount. There is no other evidence of record which indicates that the Office abused its discretion in approving the total \$2,329.76 fee.

¹ *Alvin T. Groner, Jr.*, 47 ECAB 588 (1996).

Therefore, the June 8, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 11, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member