



services for which she was charged. Appellant asserted that the fee listing did not accurately reflect the legal work Mr. Gest performed on the case.

By decision dated December 13, 2005, the Office approved an attorney's fee for the reduced amount of \$707.50 for legal services performed by Mr. Gest during the period September 27 to 29, 2005 as reasonably commensurate with the services performed.

### **LEGAL PRECEDENT**

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 is a function within the discretion of the Office based on the criteria set forth in section 10.703 of 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.<sup>1</sup> 20 C.F.R. § 10.703(c) provides in pertinent part:

“(c) *Disputed requests.* (1) Where a claimant disagrees with the amount of the fee, as indicated in the statement accompanying the submittal, [the Office] will evaluate the objection and decide whether or not to approve the request. [The Office] will provide a copy of the request to the claimant and ask him or her to submit any further information in support of the objection within 15 days from the date the request is forwarded. After that period has passed, [the Office] will evaluate the information received to 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 to the claimant;
- (ii) The nature and complexity of the claim;
- (iii) The actual time spent on development and presentation of the claim;
- (iv) Customary local charges for similar services.

“(2) Where the claimant disputes the representative's request and files an objection with [the Office], an appealable decision will be issued.<sup>2</sup>”

### **ANALYSIS**

On appeal to the Board, appellant's current representative contends that the Office committed an abuse of its discretion by failing to provide appellant with a copy of the fee application prior to its December 13, 2005 decision approving part of Mr. Gest's attorney fees.

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

<sup>2</sup> 20 C.F.R. § 10.703(c).

Counsel for appellant argues that there is no indication that the Office considered the usefulness of Mr. Gest's service, the nature and complexity of the accepted claim, actual time spent by the representative developing the case, or customary local charges for similar services, or other relevant criteria in its decision approving the requested fee.

The Board finds that the Office abused its discretion in awarding Mr. Gest the fee of \$707.50. Although appellant disputed the fee amount in her October 5, 2005 letter, there is no indication of record that the Office considered or evaluated her objection prior to approving Mr. Gest's request. In addition, there is no evidence that the Office either provided appellant with a copy of Mr. Gest's fee application to appellant prior to the December 13, 2005 attorney fee decision or afforded her the opportunity to submit any further information in support of the objection within 15 days from the date of the request, in accordance with 20 C.F.R. § 10.703(c). Therefore, appellant was not given an opportunity to contest the reasonableness of the fee amount or to indicate that she believed the fee listing did not accurately reflect the legal work Mr. Gest performed in the case prior to being charged with \$707.50 in fees. Thus, the Office abused its discretion in approving the requested fee.

**CONCLUSION**

The Board finds that the Office abused its discretion in approving an attorney's fee of \$707.50.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 13, 2005 decision of the Office of Workers' Compensation Programs be reversed.

Issued: June 27, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board