

**United States Department of Labor
Employees' Compensation Appeals Board**

V.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Mobile, AL, Employer**

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**Docket No. 06-1347
Issued: October 19, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 18, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 5, 2006 merit decision approving attorney's fees. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether the Office abused its discretion by approving an application for attorney's fees in the amount of \$6,193.00.

FACTUAL HISTORY

On June 16, 2005 appellant, then a 62-year-old mail handler group leader, filed a claim alleging that on June 15, 2005 he sustained injury when he was assaulted by a coworker. He

¹ The record contains a February 28, 2006 award of compensation granting appellant a schedule award for a 10 percent permanent impairment of his right arm. Appellant has not appealed this decision to the Board and the matter is not currently before the Board.

stopped work on June 15, 2005 and retired effective December 1, 2005. The Office accepted appellant's claim for cervical sprain/strain and contusions of the left wrist, shoulders, chest wall and left eyeball and paid appropriate compensation for periods of disability.² The Office later accepted that appellant also sustained post-traumatic stress disorder and aggravation of degenerative arthritis of the right shoulder due to his June 15, 2005 employment injury. In a letter to the Office dated August 3, 2005, appellant indicated that James A. Haggerty, Jr., was his attorney of record with respect to the claim.

In early 2006, Mr. Haggerty gave appellant and 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.³ The listed fees totaled \$6,193.00 for 56.30 hours of service and the document included detailed entries for such services as conducting research, reviewing the case record, attending hearings regarding the claim, speaking to appellant about his claim and speaking to employing establishment and Office officials.⁴

Mr. Haggerty requested that appellant sign a document indicating that he agreed with the delineated fees. Appellant did not sign the document but a copy of the document received by the Office in March 2006 contains a notation, presumably in appellant's hand, which stated, "Unless I can receive a lump sum payment I will have to pay what you say I owe you as follows: April \$1,400.00, May \$1,400.00 and the balance in June."⁵

On April 12, 2006 the Office provided appellant 15 days within which to submit a statement regarding any objection he had to the requested fee.

Appellant later submitted several letters in which he disputed the fees charged by Mr. Haggerty. He challenged the usefulness of Mr. Haggerty's service and suggested that he did not perform all the services claimed. Appellant asserted that Mr. Haggerty's trip to Mobile had nothing to do with his compensation claim and that he only drove to Mobile "to sign the contracts with him."⁶

² On September 19, 2005 appellant underwent a resection of his right clavicle which was authorized by the Office.

³ Mr. Haggerty indicated that he charged \$110.00 per hour.

⁴ The entries included fees for services at the beginning of Mr. Haggerty's representation which included traveling to appellant's home in Mobile. The document also included entries for \$608.31 in expenses or administrative costs for such items as photocopying, postage and mileage, but the Office's regulations indicate that such expenses or administrative costs do not have to be approved by the Office. *See* 20 C.F.R. § 10.702.

⁵ It appears that appellant gave Mr. Haggerty a \$3,000.00 check in March 2006.

⁶ Appellant also questioned why Mr. Haggerty's fees did not come out of the contract which provided that he received 30 percent of any recovery. The record contains a document entitled "workman's compensation contract of employment" which was signed by appellant and Mr. Haggerty on July 7, 2005 and which indicated that any recovery would be disbursed, after recovery of expenses, 70 percent to appellant and 30 percent to Mr. Haggerty. However, the Board notes that contingent fees are not recognized. 20 C.F.R. § 61.403(b).

By decision dated May 5, 2006, the Office approved Mr. Haggerty's application for attorney's fees in the amount of \$6,193.00.⁷

LEGAL PRECEDENT

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 Title 20 of the Code of Federal Regulations and mandated by Board decisions. The Board's sole function is to determine whether the action by the Office constituted an abuse of discretion.⁸ 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.⁹

Section 10.703 of the Code of Federal Regulations provides in pertinent part that a representative must submit a fee application, which includes a statement of agreement or disagreement with the amount charged, signed by the claimant.¹⁰ When a fee application has been disputed, the Office is required to provide the claimant with a copy of the fee application and request the submission of further information in support of any objection.¹¹ After the claimant has been afforded 15 days from the date the request was forwarded to respond to the request, the Office will then proceed to review the fee application 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; (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.¹²

ANALYSIS

The Board finds that the Office considered the relevant criteria in its May 5, 2006 decision approving an attorney's fee of \$6,193.00.¹³ The evidence of record does not establish that the Office abused its discretion with regard to this matter. Mr. Haggerty provided the Office

⁷ The Office actually indicated that it was approving \$6,801.31 in fees for services as it inadvertently included the \$608.31 for administrative costs in this figure. As noted above, Office's regulations indicate that such administrative costs do not have to be approved by the Office. See 20 C.F.R. § 10.702.

⁸ *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).

⁹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁰ 20 U.S.C. § 10.703(a)(i).

¹¹ 20 U.S.C. § 10.703(c).

¹² *Id.*

¹³ The Board notes that appellant did not unambiguously approve Mr. Haggerty's fee application, so therefore his application must be considered as having been disputed.

with a detailed list of the types of services provided to appellant and the amount of time he spent on each type of service.¹⁴

Appellant has alleged that the services provided by his attorney were not useful. He did not, however, provide adequate evidence in support of this contention.¹⁵ The Board notes that, after appellant's attorney began working on the case, the claim was accepted for cervical sprain/strain, contusions of the left wrist, shoulders, chest wall and left eyeball, post-traumatic stress disorder and aggravation of degenerative arthritis of the right shoulder. Appellant received compensation for various periods of disability. He also received a schedule award for a 10 percent permanent impairment of his right arm.

Appellant has argued, but has not shown, that his attorney did not actually devote to the case the hours for which approval was sought. Where the representative lists the time devoted to each task, his word is entitled to considerable weight. Unless the Office can demonstrate by clear and convincing evidence that the representative did not, in fact, spend the time alleged it must accept as given the figures that he reports.¹⁶ The record in the present case does not contain any such clear and convincing evidence and the amounts of time listed for the various services do not appear inordinate.¹⁷

CONCLUSION

The Board finds that the Office did not abuse its discretion by approving an application for attorney's fees in the amount of \$6,193.00.

¹⁴ The Office's regulations provide that a fee request should include a description of the representative's hourly rate, the number of hours worked, the work performed during the hours identified and the total amount charged for the representation (excluding administrative costs); see 20 C.F.R. § 10.703(a)(i). Prior to issuing its May 5, 2006 decision, the Office complied with the relevant procedural requirements. See *supra* note 12 and accompanying text.

¹⁵ See *Alvin T. Groner, Jr.*, 47 ECAB 588, 590 (1996).

¹⁶ *Id.* at 589-90.

¹⁷ Appellant alleged that Mr. Haggerty did not perform work on his claim when he traveled to Mobile, but he did not submit any evidence to support this contention.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 5, 2006 decision is affirmed.

Issued: October 19, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board