

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

K.F., Appellant	)	
	)	
and	)	Docket No. 09-2244
	)	Issued: June 14, 2010
U.S. POSTAL SERVICE, POST OFFICE,	)	
Bronx, NY, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 8, 2009 appellant filed an appeal with the Board from decisions of the Office of Workers' Compensation Programs decisions dated April 14 and May 15, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these attorney fee decisions.

**ISSUE**

The issue is whether the Office abused its discretion by approving attorney's fees in the amount of \$427.50 for services rendered from January 14 to February 11, 2009 and \$360.00 for services rendered from June 20 through July 7, 2008.

**FACTUAL HISTORY**

On June 15, 2002 appellant, then a 55-year-old mechanic, filed a traumatic injury claim alleging that he injured his right knee after kneeling for a period to repair a computer while in the performance of duty. He did not stop work. The Office accepted appellant's claim for right knee bursitis. It also accepted a recurrence of disability that began on December 5, 2003.

On April 23, 2009 appellant signed an agreement with the Harris Federal Law Firm. The agreement indicated that the legal representation fees would accrue at the rate of \$450.00 per hour and the paralegal representative's fees would accrue at the rate of \$225.00 per hour.

Appellant signed the agreement noting his acceptance of it. The agreement contained a provision noting that “neither [the Office] nor anyone else will reimburse me for my representative’s fees.”

On March 18, 2009 appellant’s representative submitted a request for approval of representation fees in the amount of \$427.50. The accompanying itemized statement noted that the time claimed pertained to work on the claim such as reviewing evidence, preparing documents and telephone calls. Appellant signed a statement on March 6, 2009 advising that he accepted the fees for assistance with his claim and that the Office should approve them.

In an April 14, 2009 decision, the Office approved the fee request on the basis that the claimant had not contested the reasonableness of the requested amount.

On April 24, 2009 appellant’s representative submitted approval of representation fees in the amount of \$360.00. The accompanying itemized statement noted that the time claimed pertained to work on the claim such as reviewing evidence, preparing documents and telephone calls. Appellant signed the agreement on July 21, 2008 and indicated that he accepted the fees for assistance with his claim and that the Office should approve them.

In a May 15, 2009 decision, the Office approved the fee request on the basis that the claimant had not contested the reasonableness of the requested amount.

### **LEGAL PRECEDENT -- ISSUE 1**

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.<sup>1</sup> 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.<sup>2</sup>

Section 10.703(a)(1)(ii) of the Code of Federal Regulations provide 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.<sup>3</sup> The regulations provide that a fee application is deemed approved when it is accompanied by a signed statement indicating the claimant’s agreement with the fee.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the Office considered the relevant regulatory criteria in its decisions approving the requested fees. The only documentation of the representative’s services consisted

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

<sup>3</sup> 20 C.F.R. § 10.703(a)(1)(ii) (2003).

<sup>4</sup> *Id.* at § 10.703(b) (2003).

of those in the March 18 and April 24, 2009 fee applications. The Office noted that appellant had not contested the reasonableness of the fee amount. The record reflects that appellant signed each fee request and noted that he accepted the fee. He did not submit any evidence or statement disputing reasonableness of the claimed fee. As the fee applications were accompanied by a signed agreement from appellant, they are deemed approved pursuant to the Office regulations.<sup>5</sup>

In the absence of any evidence of record that the requested fees were unreasonable or that appellant disputed the fees, the Board finds that the Office properly approved the fee applications on May 15 and April 14, 2009. There is no evidence that the Office abused its discretion in approving the requested fees.

**CONCLUSION**

Accordingly, the Board finds that the Office did not abuse its discretion in approving the attorney's fees requested.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 15 and April 14, 2009 are affirmed.

Issued: June 14, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>5</sup> *Id.*