

FACTUAL HISTORY

On October 12, 1994 appellant, then a 36-year-old flexi-clerk, sustained a left shoulder injury when she fell off of a platform while trying to retrieve mail sacks. The Office accepted the claim for left shoulder sprain, contusion to the ribs and post-traumatic stress disorder. Appellant stopped work on October 12, 1994, worked intermittently thereafter and received wage-loss compensation. In a letter to the Office dated April 19, 1995, she appointed legal counsel with respect to the claim.²

On February 20, 2008 Mr. Uliase provided appellant with a statement of his fee that detailed the services provided to appellant and the amount of time he spent on each. The listed fees totaled \$22,282.25 for the period March 27, 1995 to April 12, 2007 for 111.54 hours the fee request detailed individual such services as conducting research, reviewing the case record, attending hearings regarding the claim, speaking to appellant about her claim and speaking to employing establishment and Office officials.³ Mr. Uliase requested that appellant sign her agreement to the fee request; however, she submitted a March 10, 2008 statement noting that disagreement with the February 20, 2008 invoice for his fees. Appellant requested that counsel provide her with a copy of her claim file.

On April 9, 2008 Mr. Uliase submitted his fee application to the Office for its approval. He requested approval in the amount of \$22,282.25 for the period March 27, 1995 to April 12, 2007. Mr. Uliase submitted a copy of the March 10, 2008 statement from appellant which disputed his fee.

On April 21, 2008 the Office forwarded a copy of Mr. Uliase's fee application to appellant and provided her 15 days within which to submit a statement regarding any objection to the request. It asked that appellant specifically state why she disagreed with the fee request and submit any information she had to support her objection. Appellant did not respond.

In letters dated May 22, 2008 to June 16, 2009, counsel inquired as to the status of his fee request.

In a decision dated July 13, 2009, the Office approved the fee for services rendered on behalf of appellant in the amount of \$22,282.25.

In an appeal request form dated October 13, 2009, appellant requested an oral hearing.

In a decision dated October 30, 2009, the Office denied appellant's request for an oral hearing. It found that her request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved, and that the request was further denied for the

² In a January 12, 2008 letter, appellant authorized Aaron B. Aumiller, Esq., as attorney of record with respect to her claim and terminated the appointment of any previous representative.

³ Mr. Uliase claimed 71.34 hours at the rate of \$250.00 per hour. Counsel claimed 9.07 hours for work performed by attorney Carolyn Uliase at the hourly rate of \$225.00. The remainder of the claimed time was performed by paralegals at the rate of \$100.00 per hour and office staff at the rate of \$50.00 per hour.

reason that the issues in this case could be addressed by requesting reconsideration from the office and submitting evidence not previously considered.

LEGAL PRECEDENT -- ISSUE 1

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.⁴ 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.⁵

Section 10.703 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.⁶ 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.⁷ 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.⁸

ANALYSIS -- ISSUE 1

The Board finds that the Office considered the relevant criteria of section 10.703 in its July 13, 2009 decision approving an attorney's fee of \$22,282.25. The evidence of record does not establish that the Office abused its discretion with regard to this matter. Counsel provided the Office with a detailed list of the services provided in representation of appellant and the amount of time he spent on each type of service.⁹

⁴ *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).

⁵ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁶ 20 C.F.R. § 10.703(a)(i).

⁷ *Id.* at § 10.703(c).

⁸ *Id.*

⁹ 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).

Appellant submitted a March 10, 2008 statement that disagreed with the February 20, 2008 attorney fee request. Mr. Uliase submitted her statement of disagreement to the Office. Consistent with its regulations pertaining to a disputed fee application, the Office provided appellant with a copy of the application and allowed her the opportunity to submit further information in support of any specific objection to the requested fee. Appellant did not respond.¹⁰ The Board notes that, after Mr. Uliase was returned, the claim was accepted for left shoulder sprain, contusion to the ribs and post-traumatic stress disorder. Appellant received wage-loss compensation for periods of disability.

Appellant stated generally that she was not in agreement with the fee application; however, she failed to address any specific objection or submit information related to the services provided. 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.¹¹ 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.

On appeal appellant disputed the attorney fee request noting that counsel failed to competently analyze the medical and legal issues and exercise knowledge of the law. She further asserted that counsel missed a deadline which caused the statute of limitations to run and precluded her from pursuing her claim. The Board notes that appellant failed to submit any evidence in support of her objection to the fee application before the Office and her unsupported assertions on appeal that counsel failed to competently represent her is insufficient to establish that the Office abused its discretion by approving the fee application. The Board notes that appellant submitted evidence on appeal; however, the Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision; therefore, the Board is unable to review evidence submitted by appellant on appeal.¹²

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."¹³ Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.¹⁴ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as

¹⁰ See *V.T.*, 58 ECAB 133 (2006); see also *Alvin T. Groner, Jr.*, 47 ECAB 588, 590 (1996).

¹¹ *Id.*; *Cf. C.H.*, Docket No. 10-987 (issued March 22, 2011).

¹² 20 C.F.R. § 501.2(c).

¹³ 5 U.S.C. § 8124(b)(1).

¹⁴ 20 C.F.R. §§ 10.616, 10.617.

determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.¹⁵ Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant's request and must exercise its discretion.¹⁶ The Office's procedures require that it exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).¹⁷

ANALYSIS -- ISSUE 2

Appellant requested a hearing in an appeal form dated October 13, 2009. As the hearing request was made more than 30 days after issuance of the July 13, 2009 Office decision, her request for an oral hearing was untimely filed and she is not entitled to a hearing as a matter of right.

The Office also notified appellant that it had considered the matter in relation to the issue involved and indicated that additional argument and evidence could be submitted with a request for reconsideration. It has broad administrative discretion in choosing means to achieve its general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.¹⁸ There is no indication that the Office abused its discretion in this case in finding that appellant could further pursue the matter through the reconsideration process.

Consequently, the Office properly denied appellant's request for a hearing.

CONCLUSION

The Board finds that the Office did not abuse its discretion by approving an application for attorney's fees in the amount of \$22,282.25. The Board further finds the Office properly denied appellant's request for a hearing as untimely.

¹⁵ *Id.* at § 10.616(a).

¹⁶ *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁷ *See R.T.*, Docket No. 08-408 (issued December 16, 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(b)(3) (October 1992).

¹⁸ *Samuel R. Johnson*, 51 ECAB 612 (2000).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated October 30 and July 13, 2009 are affirmed.

Issued: April 22, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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