

sprain/strain, spinal stenosis at L4-5, postoperative infection and chondromalacia of the right patella. Appellant received schedule awards for a 21 percent impairment of his right lower extremity² and an 11 percent impairment of his left. OWCP terminated his compensation for wage loss effective September 28, 2010, which the Board reversed on March 19, 2013.³

In October 2013 appellant's attorney submitted to OWCP a request for authorization of attorney fees. He submitted a representation contract providing an hourly rate of \$225.00 and an itemization of services totaling 27.5 hours. Appellant's attorney advised that \$200.00 was a reasonable hourly rate, but he would leave it to OWCP's sound discretion. He called OWCP's attention to a provision in the representation contract stating that the hourly fee would be \$150.00 in the event representation was terminated.

Appellant responded that he disagreed with the attorney fees requested because the attorney had misled him and failed to properly defend him against unjust charges brought by the employing establishment. He alleged that the attorney broke his promise to send him to a second opinion physician and physical therapist and to depose the treating physician. Appellant stated that he obtained and paid for a second opinion on his own, which his attorney ignored. He strongly believed that the attorney padded his services, and that his appeal succeeded on its own merit, not because his attorney argued for or defended him in any way. Appellant added that he had not yet been placed back on the periodic rolls.

In a decision dated November 22, 2013, OWCP approved attorney fees in the amount of \$2,175.00 for 14.5 hours of services rendered from January 27, 2011 to April 15, 2013. It identified what evidence it had received. OWCP noted that a contingency fee was not allowed, and that the representation contract provided for an hourly rate of \$150.00, as representation was terminated. OWCP therefore approved attorney fees at that rate.

LEGAL PRECEDENT

It is not the Board's function to determine the fee for representative services performed before OWCP. That is a function within the discretion of OWCP 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 OWCP 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

² The Board affirmed this award. Docket No. 09-1175 (issued May 10, 2010).

³ Docket No. 12-501 (issued March 19, 2013).

⁴ *C.H.*, Docket No. 10-987 (issued March 22, 2011); *L.H.*, Docket No. 11-900 (issued December 6, 2011).

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

disagreement with the amount charged, signed by the claimant.⁶ When a fee application has been disputed, OWCP 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, OWCP 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 Contingency fee arrangements are not recognized under FECA.⁹

ANALYSIS

The Board finds that OWCP did not abuse its discretion. OWCP reviewed the attorney's fee request and appellant's objections. It allowed 14.5 hours of the 27.5 hours billed. OWCP reviewed the representation contract and found that a contingency fee was not allowed. Further, it found that under the terms of the contract the hourly rate should be \$150.00, not \$225.00 or \$200.00, as the attorney's representation was terminated. As OWCP gave due regard to relevant factors in exercising its discretion, the Board finds that OWCP properly approved attorney fees of \$2,175.00. The Board will therefore affirm OWCP's November 22, 2013 decision.

Although appellant had some objections to how the attorney represented him, and although he believed that the attorney had padded his fee request, he did not identify any single service or charge on the itemization or explain why he disputed it. He contractually agreed to pay legal fees for any work actually performed in prosecuting the matter and he confirmed that the attorney made no guarantees.

CONCLUSION

The Board finds that OWCP properly approved attorney fees of \$2,175.00 for 14.5 hours of services rendered from January 27, 2011 to April 15, 2013.

⁶ 20 C.F.R. § 10.703(a)(i).

⁷ *Id.* at § 10.703(c).

⁸ *Id.*

⁹ *Angela M. Sanden*, Docket No. 04-1632 (issued September 20, 2004).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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