



standard than required under its governing regulations and abused its discretion in denying his requested fees.

### **FACTUAL HISTORY**

On August 14, 2007 the employee, then a 49-year-old mail handler, filed a traumatic injury claim alleging that he sustained a lumbar strain while picking up a mail sack from a nutting truck to deposit it in its proper container. OWCP accepted this claim for sprain of back lumbar region on October 4, 2007.

The employee authorized counsel to represent him on November 29, 2011. By letter dated January 23, 2014, however, appellant noted the termination of his representation as of that date.

Counsel provided OWCP with a letter dated January 23, 2014 which included an itemized bill for attorney fees for the period May 6 through December 27, 2013 totalling \$421.50.<sup>2</sup> Each statement was signed by the employee indicating that he agreed to the amount contained in the itemized bill and that he authorized his attorney to accepted payment. Counsel also stated that the employee had received a copy of the letter addressed to OWCP which provided him with an additional opportunity to pay.

The itemized billing statements reflected a variety of charges with the corresponding dates of the charges. Counsel listed telephone calls to Dr. Steven Riggall, a Board-certified psychiatrist. The bills also included e-mails to the employee regarding an appointment with Dr. Patrick Shaughnessy, a Board-certified physiatrist, and e-mails to the employee regarding the request for a narrative medical report. Appellant listed charges for telephone calls with the employee, charges for reviewing the file for a consequential emotional condition claim, and charges for both calls and e-mails to the employee regarding obtaining additional evidence from a new physician. The bills also included telephone calls and e-mails regarding Dr. Thomas F. Scott, a Board-certified orthopedic surgeon. Counsel also listed charges for e-mails to the employee regarding outstanding medical bills and telephone calls to the employee regarding medical reimbursement.

In a letter dated March 26, 2014, OWCP informed counsel that his fee request was incomplete as it did not contain an itemized statement including all the dates and fees charged from May 6 to December 27, 2013 and clear evidence that the services performed were in connection with the employee's August 12, 2007 employment injury. It stated that Drs. Riggall, Scott, and Shaughnessy were not recognized physicians in the employee's claim. OWCP asked that appellant describe the nature of his contact with these physicians and submit evidence that supported their treatment of the employee was related to his accepted employment injury. It allowed appellant 30 days to provide the missing information.

Counsel responded to OWCP on August 8, 2014 and stated that all the bills submitted included the appropriate date, description of service, time elapsed while performing the service

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<sup>2</sup> These statements encompassed work performed for 3 hours and 18 minutes in part by the attorney, Cory Fritz and Frances A. Lenox. Each of these listed person billed their time at a different hourly rate.

and the charged amount. He further argued that, although the physicians discussed did not submit information to OWCP, the employee sought their assistance in regard to his accepted injury. Counsel also asserted that the employee received, reviewed, and signed every billing statement provided to OWCP for fee approval.

In a letter dated August 29, 2014, counsel requested a final decision regarding his fee request of \$421.50 and argued that the request was complete and appropriate.

By decision dated October 1, 2014, OWCP denied the requested fees. It stated that services by the attorney must have a relationship to the claim. OWCP stated that the services rendered by appellant were not performed in connection with the injury sustained by the employee on August 12, 2007. It stated that clear medical evidence was not submitted to support that the fees charged for services rendered to Drs. Riggall, Scott, and Shaughnessy were in connection with the employee's August 12, 2007 employment injury. OWCP noted that these physicians were not formally associated with the employee's claim and that there were no medical reports from these physicians included in the record which would support their involvement with appellant or treatment of the employee.

### **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 in Board decisions. The Board's sole function is to determine whether the action by OWCP constituted an abuse of discretion.<sup>3</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.

Pursuant to OWCP regulations found at 20 C.F.R. § 10.703(a), a representative must submit a fee application to OWCP, which includes an itemized statement identifying his or her hourly rate, the number of hours worked, the specific work performed, and the total amount charged for the representation minus administrative costs. The application shall also contain a signed statement from the claimant either agreeing or disagreeing with the amount charged and acknowledging that he or she, not OWCP, is responsible for paying the fee and other costs.<sup>4</sup> Where such a compliant fee application is received with a signed statement indicating the employee's agreement with the fee, the application is deemed approved.<sup>5</sup>

OWCP's procedures also state that where a proper fee application including an itemized statement of the hourly rate, the number of hours worked, a description of the specific work performed, and the total amount charged exclusive of administrative costs is accompanied by a

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<sup>3</sup> *J.P.*, Docket No. 11-953 (issued June 19, 2012); *L.H.*, Docket No. 11-900 (issued December 6, 2011); *C.H.*, Docket No. 10-987 (issued March 22, 2011).

<sup>4</sup> 20 C.F.R. § 10.703(a).

<sup>5</sup> *Id.* at § 10.703(b).

signed statement indicating the claimant's agreement with the fee the application will be deemed approved.<sup>6</sup>

The procedure manual also provides that OWCP may not approve fees for service in certain situations. These included matters which have no relation to the claim or for work done before another government agency or before the Board. The procedure manual specifically includes claims including administrative expenses, time spent preparing the request for fees and contingency fees as those outside the scope of approval by OWCP.<sup>7</sup>

### ANALYSIS

The Board finds that OWCP abused its discretion by denying the requested attorney's fees. The fee request included itemized statements identifying the rate charged, the number of hours worked, the specific work performed and the total amounts charged. Each statement was signed by the employee confirming that he agreed to the amount owed and authorized payment. The employee did not dispute the fee and did not object to the amount. In accordance with 20 C.F.R. § 10.703 and OWCP's procedures above, OWCP should have deemed the fee request approved.<sup>8</sup>

Given that the employee agreed to the itemized fee, in accordance with OWCP's regulations and procedure manual, OWCP had no reason to deny the fee. Instead in this case, OWCP undertook additional review and investigation of the claim and abused its discretion by denying the application. The Board finds no evidence in the record that the fee charged was associated with a contingency fee agreement, with services before the Board or before another government agency. There was no basis for OWCP to undertake an additional level of scrutiny and it acted outside of the scope of its review in accordance with its regulations and procedure manual. OWCP therefore erred in denying the fee application which was agreed to in its entirety by the employee.

### CONCLUSION

The Board finds that OWCP abused its discretion in denying appellant's application for attorney's fees in the amount of \$421.50 for the period May 6 through December 27, 2013.

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<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Representative's Services*, Chapter 2.1200.6b and 6c (June 2012).

<sup>7</sup> *Id.* at Chapter 2.1200.5 (June 2012).

<sup>8</sup> *See K.F.*, Docket No. 09-2244 (issued June 14, 2010) (finding that as the employee signed each fee request and noted that he accepted the fee, they were deemed approved pursuant to OWCP's regulations).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 1, 2014 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 28, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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