

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

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**W.H., Appellant**

**and**

**DEPARTMENT OF JUSTICE, BUREAU OF  
PRISONS, FEDERAL CORRECTION  
INSTITUTION, Fort Dix, NJ, Employer**

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**Docket No. 16-1297  
Issued: May 9, 2017**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On June 3, 2016 appellant, through current counsel, filed a timely appeal from a May 12, 2016 attorney fee decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits over the issue addressed in the May 12, 2016 decision.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative’s collection of a fee without the Board’s approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether OWCP abused its discretion by approving appellant's prior counsel's fee in the amount of \$1,500.00.

On appeal, appellant's current counsel contends that the decision dated May 12, 2016 was "contrary to law and fact."

## FACTUAL HISTORY

Effective February 2, 2015 appellant authorized Aaron B. Aumiller of Aumiller Lomax LLC to represent him in matters relating to his claim with OWCP. OWCP acknowledged the firm's representation of appellant on February 5, 2015, and the record contains correspondence between OWCP and the firm from the date of authorization through the date of the decision at issue in this case.

Appellant then a 36-year-old correctional officer, filed a traumatic injury claim (Form CA-1) on December 21, 2014 alleging that he injured his right elbow, right knee, and back that day when his boot caught the metal edging of stairs causing him to fall. His claim had originally been approved administratively. As the medical bills exceeded \$1,500.00, OWCP formally adjudicated the claim. By decision dated March 27, 2015, OWCP formally accepted sprain of the right elbow and forearm and contusion of the right elbow.

On May 13, 2015 Mr. Lomax requested approval of attorneys' fees of \$1,500.00. Attached was an invoice documenting client services by firm attorneys at the rate of \$495.00 per hour for 3.30 hours, for a total of \$1,633.50 for the period January 7 through February 11, 2015. Mr. Lomax indicated that the fee was reduced to \$1,500.00. Also attached was a fee approval statement signed by appellant on February 27, 2015 in which he noted his agreement that the fee was fair and reasonable.

In letters dated June 26, 2015, appellant informed Aumiller Lomax LLC and OWCP that he was terminating the attorney-client agreement with the firm as of that date. He advised that he no longer believed counsel's services were reasonable as counsel had failed to return telephone calls or to respond to questions.

On July 6, 2015 OWCP acknowledged to appellant that the firm of Aumiller Lomax LLC was no longer representing him.

On July 23, 2015 Alan J. Shapiro, Esquire advised OWCP that he had now been authorized to represent appellant in matters relating to his claim with OWCP.<sup>3</sup> By letter dated July 28, 2015, OWCP acknowledged Mr. Shapiro's representation of appellant.

On May 11, 2016 an attorney at Aumiller Lomax telephoned OWCP inquiring about the May 13, 2015 fee request.

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<sup>3</sup> Appellant had signed an authorization for Alan J. Shapiro, Esquire to represent him on July 5, 2015.

In a decision dated May 12, 2016, OWCP approved the \$1,500.00 fee request. Appeal rights were attached. These indicated that “if either party disagrees with the decision, either or both have the right to appeal to the Employees’ Compensation Appeals Board.”

### **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.<sup>4</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>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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: (1) usefulness of the representative’s services; (2) the nature and complexity of the claim; (3) the actual time spent on development and presentation of the claim; and (4) customary local charges for similar services.<sup>8</sup>

### **ANALYSIS**

The Board finds that OWCP did not abuse its discretion. OWCP considered the detailed fee application submitted by counsel, Mr. Lomax, describing the specific legal services provided from January 7 to February 11, 2015 in the amount of \$1,500.00. On a statement signed and dated by appellant on February 27, 2015, appellant agreed that the attorneys’ fee of \$1,500.00 was fair and reasonable. OWCP approved the fee on May 12, 2016.

The Board finds that, as appellant agreed that the fees charged were fair and reasonable, OWCP did not abuse its discretion by approving the \$1,500.00 fee for services rendered by Mr. Lomax from January 7 to February 11, 2015.<sup>9</sup> The Board notes that in appellant’s later

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<sup>4</sup> *J.P.*, Docket No. 11-63 (issued June 19, 2012).

<sup>5</sup> *Daniel J. Perea*, 42 ECAB 214 (1999).

<sup>6</sup> 20 C.F.R. § 10.703(a)(i).

<sup>7</sup> *Id.* at § 10.703(c).

<sup>8</sup> *Id.*; see *J.C.*, Docket No. 15-284 (issued May 14, 2015).

<sup>9</sup> *Id.*

withdrawal of counsel letter, he did not dispute the original attorney fee request and appellant's current counsel has provided no argument as to why the fee would be inappropriate. Counsel's only argument on appeal was that the decision was "contrary to law and fact."

**CONCLUSION**

The Board finds that OWCP did not abuse its discretion by approving appellant's prior counsel's fee in the amount of \$1,500.00.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board