

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

C.S., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PROTECTION,)
Washington, DC, Employer)

Docket No. 18-0047
Issued: March 15, 2018

Appearances:
*Richard A. Weisbord, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 5, 2017 counsel filed a timely appeal from a September 7, 2017 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this issue.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP abused its discretion by only approving \$1,470.00 of an attorney's fee request for \$6,282.50.

FACTUAL HISTORY

On August 11, 2017 Richard Weisbord, Esquire submitted a request for approval of an attorney's fee in the amount of \$6,282.50 for 17.95 hours of legal services performed from November 2016 to August 2017.³ Counsel's services were billed at an hourly rate of \$350.00. The fee petition was accompanied by a fee agreement signed by appellant on November 30, 2016, wherein the parties agreed to an hourly rate of \$350.00. It was also accompanied by a statement signed by appellant, in which she acknowledged having read the fee petition at the request of counsel. She further noted that she was satisfied with the services performed by counsel as denoted and agreed that the requested fee was reasonable and consistent with the fee agreement she had executed. Appellant advised that she concurred that the fee request should be approved and noted that she understood that any approved fee was payable by her, and was not payable by OWCP in addition to her benefits nor as a deduction from her benefits.

In a September 7, 2017 decision, OWCP indicated that it had approved a fee in the amount of \$1,470.00 for services rendered by counsel on March 2, 2017. It noted that, on March 2, 2017, there was a hearing with regard to a preliminary determination of overpayment of compensation, where counsel represented appellant on that date. OWCP advised that the amount counsel billed (\$6,282.50) was excessive and unreasonable when compared to the benefit obtained for appellant, that being an ordered recalculation of the overpayment because of an omission of premium pay. It indicated that the overpayment remained under development and would be recalculated by OWCP to resubmit to appellant at a later time. OWCP further noted, "Therefore, the only fee amount that is currently approved is \$1,470.00 incurred on [March 2, 2017], the date of the hearing."

LEGAL PRECEDENT

It is not the function of the Board to determine the fee for services performed by a representative of a claimant before OWCP. That function is 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 sole function of the Board on appeal is to determine whether the action of 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

³ The fee petition listed 18.80 hours of services provided, but counsel only charged appellant for 17.95 hours of services.

⁴ *Alvin T. Groner, Jr.*, 47 ECAB 588 (1996); *Edward Snider*, 39 ECAB 1268 (1988).

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

Section 10.703(a)(1)(ii) 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.⁶ A fee application is deemed approved when it is accompanied by a signed statement indicating the claimant's agreement with the fee.⁷

ANALYSIS

In the instant case, appellant submitted a signed statement approving Mr. Weisbord's fee request for \$6,282.50. OWCP only approved \$1,470.00 of Mr. Weisbord's fee request for \$6,282.50, and it did so without considering appellant's statement approving Mr. Weisbord's fee request in the full amount. As noted above, a fee application is deemed approved when it is accompanied by a signed statement indicating the claimant's agreement with the fee.⁸ The Board finds that OWCP abused its discretion by only approving \$1,470.00 of the attorney's fee request for \$6,282.50 because, under the above-noted standards, it should have approved the attorney's fee request in the total amount of \$6,282.50.

CONCLUSION

The Board finds that OWCP abused its discretion by only approving \$1,470.00 of an attorney's fee request for \$6,282.50. The case is remanded to OWCP for further development.

⁶ 20 C.F.R. § 10.703(a)(1)(ii).

⁷ *Id.* at § 10.703(b).

⁸ *See supra* note 7. *See also* *Gerald A. Carr*, 55 ECAB 225 (2004).

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further action consistent with this decision.

Issued: March 15, 2018
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board