

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID J. HUGHES and U.S. POSTAL SERVICE,  
POST OFFICE, Medford, NY

*Docket No. 97-999; Submitted on the Record;  
Issued August 23, 1999*

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DECISION and ORDER

Re: Attorney's Fee

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion by approving appellant's attorney's fee of \$2,020.00.

By letter dated August 17, 1995, which was accompanied by a petition for attorney fees and itemized statement, Mr. Douglas E. Daze, Esquire of Jacksonville, Florida, appellant's representative before the Office, requested approval by the Office of a fee in the amount of \$2,020.00 for 11.5 hours of work performed during July 1995 to July 25, 1995. Mr. Daze noted that the hourly fee ranged between \$175.00 and \$350.00 per hour, but did not note the exact hourly fee he was charging.

By letter dated October 19, 1995, the Office advised Mr. Daze that his fee could not be approved at that time and requested he provide his hourly rate and the clarifying date for the first charge.

By letter dated February 28, 1996, Mr. Daze advised the house that his customary hourly fee is \$250.00<sup>1</sup> and that the date of the first charge was July 12, 1995.

By decision dated November 26, 1996, incorporating findings of fact, the Office approved Mr. Daze's fee request in the amount of \$2,020.00 for legal services, rendered from July 12 to 25, 1995, on the grounds that the fee was reasonably commensurate with the actual necessary work performed in representing appellant before the Office. The Office noted that pursuant to 5 U.S.C. § 8127 and 20 C.F.R. § 10.145 a claimant was legally liable for only those

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<sup>1</sup> The Board notes that Mr. Daze's attorney fee is \$175.65 per hour as this is the amount reached when dividing \$2,020.00 by 11.5.

fees for service that have been approved by the Office. In the findings of fact the Office noted that appellant had not contested the reasonableness of the fee.

On January 16, 1997 appellant filed an appeal of the November 26, 1996 decision with the Board wanting to know why he should be responsible for paying his attorney's fee instead of the Office.

The Board finds that the Office did not abuse its discretion in approving an attorney's fee of \$2,020.00.

The criteria governing the approval of fees for representation services are set forth in 20 C.F.R. § 10.145(b) which provides as follows:

“(b) The fee approved by the Office will be determined on the basis of the actual necessary work performed and will generally include but are not limited to the following factors:

- (1) Usefulness of the representative's services to the claimant.
- (2) The nature and complexity of the claim.
- (3) The actual time spent on development and presentation of the claim.
- (4) The amount of compensation accrued and potential future payments.
- (5) Customary local charges for similar services.
- (6) Professional qualifications of the representative.”

The record shows that in approving the \$2,020.00 fee, the Office took into consideration the criteria set forth in 20 C.F.R. § 10.145 pertaining to fees for representative's services, including the services performed by Mr. Daze, the time devoted to each service as set forth in the itemized statement, the complexity of the case the amount of compensation accrued by appellant and Mr. Daze's hourly rate in comparison to the customary local charges for similar services.

Appellant contends on appeal that it should be the Office's obligation to pay his attorney's fee. However, there is no provision in the Federal Employees' Compensation Act<sup>2</sup> or its implementing regulations<sup>3</sup> for payment of a claimant's attorney's fees. Section 10.145(f) of the implementing regulations provides that the “Office will not pay ... any representative fee.”<sup>4</sup> Thus, regardless of the reasons which may have necessitated an attorney's services, it is well established that an attorney's fee is the personal obligation of the claimant, subject to prior

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<sup>2</sup> 5 U.S.C. §§ 8106-8193.

<sup>3</sup> 20 C.F.R. § 10.1 *et seq.*; 20 C.F.R. § 501.1 *et seq.*

<sup>4</sup> 20 C.F.R. § 10.145(f).

approval by the Office for legal services performed before it.<sup>5</sup> Appellant has not contended or shown that Mr. Daze did not perform the work, for which the fee was charged or that Mr. Daze's representation was deficient in any manner.

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 26, 1996 is hereby affirmed.

Dated, Washington, D.C.  
August 23, 1999

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> *John E. Warner*, 44 ECAB 612, 615 (1993); *John E. Harman*, 41 ECAB 169, 176 (1989); *Jeffrey Atkins*, 34 ECAB 44 (1982).