

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PABLO R. PILPA and DEPARTMENT OF JUSTICE, IMMIGRATION
& NATURALIZATION SERVICE, Los Angeles, Calif.

*Docket No. 97-775; Submitted on the Record;
Issued July 19, 1999*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs abused its discretion in approving an attorney's fee of \$2,857.50.

The Board finds that the Office did not abuse its discretion in approving an attorney's fee of \$2,857.50.

It is not the Board's function to determine the fee for representative services performed before the Office. That is a function within the discretion of the Office based on the criteria set forth in 20 C.F.R. § 10.145 and mandated by Board decisions. The Board's sole function is to determine whether the action by the Office constituted an abuse of discretion.¹ The Board has frequently stated that it will not interfere with or set aside a determination by the Office of a fee for representative services unless the evidence of record supports that the determination made by the Office represents an abuse of discretion.² 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.³

¹ *Regina G. Jackson*, 41 ECAB 321, 325 (1989); *Charles A. Mikalaynas*, 40 ECAB 1277, 1279-80 (1989); *William Lee Gargus*, 25 ECAB 187, 194 (1974).

² *Edna M. Davis (Kenneth L. Davis)*, 42 ECAB 728, 734-35 (1991).

³ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The criteria governing the approval of fees for representative's services are provided in 20 C.F.R. § 10.145(b), which provides the following:

“(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.”

In the present case, the Office considered the relevant criteria in its December 5, 1996 decision approving an attorney's fee of \$2,857.50. The evidence of record does not establish that the Office abused its discretion with regard to this matter. Appellant's attorney provided the Office a detailed list of the types of services provided to appellant and the amount of time he spent on each type of service.⁴ In an accompanying statement dated October 25, 1996, appellant's attorney further explained the basis for his fee request; he noted that he was one of only two attorneys in the region who handled federal workers' compensation claims.

Appellant has alleged that the services provided by his attorney were not useful. The Board notes that after appellant's attorney began working on the case appellant's claim was accepted for a plantar spur of the right foot and appellant received compensation for various periods of disability. Appellant alleged that his attorney filed an unsuccessful claim for retroactive augmented disability compensation for the period October 15, 1994 to March 3, 1995 after he had advised him that he worked at the employing establishment during this period. Appellant did not, however, provide adequate evidence in support of this contention.⁵

Appellant has argued, but has not shown, that his attorney did not actually devote to the case the hours for which approval was sought.⁶ Where the representative lists the time devoted to each task, his word is entitled to considerable weight. Unless the Office can demonstrate by clear and convincing evidence that the representative did not, in fact, spend the time alleged, it must accept as given the figure he reports.⁷ The record in the present case, does not contain any

⁴ The Office's regulations provide that a fee request should include a description of each service rendered with the amount of time spent on each type of service; *see* 20 C.F.R. § 10.145(c)(2).

⁵ *See Alvin T. Groner, Jr.*, 47 ECAB 588, 590 (1996).

⁶ Appellant indicated that he did not ever remember speaking to his attorney for more than 10 minutes at a time.

⁷ *See Groner, supra* note 5 at 589-90.

such clear and convincing evidence and the amounts of time listed for the various services do not appear inordinate.⁸

For these reasons, the Office did not abuse its discretion in approving an attorney's fee of \$2,857.50.

The decision of the Office of Workers' Compensation Programs dated December 5, 1996 is affirmed.

Dated, Washington, D.C.
July 19, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ On appeal appellant indicated that work was performed under two separate Office claim numbers which related to the same injury. He did not adequately articulate the nature of this argument and its relevance to the Office's approval of attorney fees.