

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENDY J. ROACH and FEDERAL JUDICIARY, FEDERAL DISTRICT
COURT, DISTRICT OF KANSAS, Wichita, KS

*Docket No. 98-2388; Submitted on the Record;
Issued February 14, 2000*

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 by approving an attorney's fee in the amount of \$3,431.25.

On October 29, 1993 appellant signed a retainer agreement with Gary E. Laughlin, Esq., agreeing to pay him \$110.00 per hour for his representational services before the Office in her attempt to obtain compensation for temporary total disability.¹

Appellant's claim was accepted for post-traumatic stress disorder on November 24, 1993. Thereafter, Mr. Laughlin continued to represent appellant, coordinate medical care and obtain supportive medical evidence, complete forms, make telephone calls and write letters on her behalf through April 30, 1998.

By letter dated June 3, 1998, Mr. Laughlin requested fee approval for legal services on behalf of appellant in the amount of \$3,431.25 and for legal expenses in the amount of \$44.35. The fees included 23.00 attorney hours at \$110.00 per hour for 1993 to 1997, .70 hours at \$135.00 per hour for 1998,² 13.30 legal assistant hours at \$37.50 per hour for 1993 to 1997 and .20 hours at \$40.00 per hour for 1998.³

On June 2, 1998 appellant signed a statement indicating that she was in agreement with the billing statement from Mr. Laughlin, and that she believed that the application for attorney fees was appropriate and reasonable. Appellant urged Office approval of the attorney fee application.

¹ Appellant, a paralegal, was a witness to a courthouse shooting rampage in which a gunman, after killing a guard and shooting randomly, entered her office and shot another woman.

² Mr. Laughlin's billing rate increased from \$110.00 per hour for 1993 to 1997, to \$135.00 per hour for 1998.

³ Legal assistant billing rate increased from \$37.50 per hour for 1993 to 1997, to \$40.00 per hour for 1998.

By letter to Mr. Laughlin dated June 15, 1998, the Office explained that it did not rule on legal expenses incurred by a representative, and such expenses were a matter between the representative and the client.

Also by letter that date, the Office approved fees for legal services in the amount of \$3,431.25. In making this determination, the Office considered the usefulness of the representative's services, the nature and complexity of the case, the actual time spent on development and presentation of the case, the amount of charges for similar services, the professional qualifications of the representative and all other pertinent factors in the record.

The Board finds that the Office did not abuse its discretion by approving an attorney's fee in the amount of \$3,431.25.

It is not the function of the Board to determine the fee for services performed by a representative of a claimant before the Office. That is a function within the discretion of the Office based on the criteria set forth in section 10.145 of Title 20 of the Code of Federal Regulations.⁴ The Board's sole function is to determine whether the action taken by the Office on the matter of the attorney's fee constituted an abuse of discretion.⁵ 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.⁶ As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.⁷ Pursuant to these guidelines, the evidence of record does not support a finding that the action taken by the Office in approving fees for legal services in the amount of \$3,431.25 for Mr. Laughlin constituted an abuse of discretion.

The record demonstrates that, in approving the \$3,431.25 fee, the Office took into consideration the criteria set forth in 20 C.F.R. § 10.145 pertaining to fees for representative services, including: the usefulness of the attorney's services, the nature and complexity of the claim, the actual time spent on development and presentation of the claim, the amount of compensation accrued and potential future payments, the customary local charges for similar services, and the professional qualifications of appellant's representative. Further, the record establishes that appellant approved her attorney's request for approval of the stated fees. The Board therefore finds that the Office did not abuse its discretion in approving the requested fee of \$3,431.25.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 15, 1998 is hereby affirmed.

⁴ 20 C.F.R. § 10.145.

⁵ *William Lee Gargus*, 25 ECAB 187 (1974).

⁶ *See Roy Goldman*, 32 ECAB 1569 (1981).

⁷ *Daniel J. Perea*, 42 ECAB 214 (1990).

Dated, Washington, D.C.
February 14, 2000

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member