

appellant on March 31, 2011 reflecting that, although she was aware of her responsibility to pay the fee, she did not approve of the fee.

By decision dated April 8, 2011, OWCP approved Mr. Shapiro's application for fees. It reduced the amount of fees awarded, however, to \$3,981.25, finding that the attorney had apparently made an error in calculating the total fee amount based on his hourly rate and time expended.²

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 the Board decisions. The sole function of the Board on appeal is to determine whether the action of OWCP constituted an abuse of discretion.³ 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.⁴

OWCP is required to follow certain procedures in fee application cases. 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.⁵ 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. After the claimant has been afforded a reasonable time 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: (i) usefulness of the representative's services; (ii) the nature and complexity of the claim; (iii) the actual time spent on development and presentation of the claim; and (iv) customary local charges for similar services.⁶

The Board finds that this case is not in posture for decision regarding OWCP's approval of attorneys' fees of \$3,981.25. OWCP failed to follow the procedures set forth above at section 10.703 of its regulations with respect to providing appellant with an opportunity to support her objection to the fees requested. Appellant's representative submitted a fee application, which appellant disputed. OWCP, however, did not provide appellant with a copy of the fee application and request the submission of further information in support of her objection, as required by its procedures.⁷ Therefore, appellant was deprived of the opportunity to provide evidence regarding the disputed fees. In light of the foregoing, the Board finds that the case

² OWCP explained that 12.25 hours times the hourly rate of \$325.00 resulted in total fees of \$3981.25.

³ *Alvin T. Groner, Jr.*, 47 ECAB 588 (1996); *Edward Snider*, 39 ECAB 1268 (1988).

⁴ *Gerald A. Carr*, 55 ECAB 225 (2004).

⁵ 20 C.F.R. § 10.703(a)(1)(ii).

⁶ *Id.* at § 10.703(c).

⁷ *Id.*

must be remanded to OWCP to consider the attorneys' fee application according to the applicable regulatory procedures.

IT IS HEREBY ORDERED THAT the April 8, 2011 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this order of the Board.

Issued: April 12, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board