

PART XI
ATTORNEY FEES

A. BOARD REVIEW OF ATTORNEY FEE AWARDS MADE BELOW

10. MISCELLANEOUS ISSUES

As there are extraneous issues related to attorney fee cases that have not been covered by previous sections on topic issues, the following case listings and digests cover a wide range of related attorney fee issues.

CASE LISTINGS

[adjudicator may not round off time claimed to nearest quarter of an hour] ***Porter v. Director, OWCP***, 4 BLR 1-392 (1982).

[accord and satisfaction common law principle not applicable to fee awards; counsel may accept tender of attorney fee made by employer pursuant to award and still initiate or pursue additional fees] ***Moore v. Central Ohio Coal Co.***, 6 BLR 1-1075 (1984).

DIGESTS

Attorney fees are payable only to the individual attorney or law firm who rendered services on behalf of claimant in his successful establishment of entitlement; therefore, fees were not properly payable to the United Mine Workers of America. ***Kiwall v. Director, OWCP***, 9 BLR 1-142 (1986).

The Board affirmed the denial of an attorney fee to counsel who was both an employee of the Department of Labor's Office of Workers' Compensation Programs and the son of the black lung claimant whom he represented. Noting the impropriety and the potential for conflict of interest, the Board did not address the legality of the representation, but affirmed the denial of a fee based on the terms set by counsel's supervisor at the commencement of the application process. ***Hayes v. Director, OWCP***, 11 BLR 1-20 (1987).

The Board held that to allow offset during periods when claimants' Kentucky benefits

were suspended, in order that the Kentucky Special Fund could be reimbursed for monies paid up-front to claimants' attorneys at the time of the state award, would wrongfully deprive claimants of their federally mandated level of compensation. The Board distinguished **Sculli v. Bethlehem Mines Corp.**, 8 BLR 1-206 (1985), because its facts indicate that the monthly benefit claimant received from Pennsylvania minus the deduction for the legal fee was greater than the federal benefit level, whereas here claimants' state benefits were reduced to zero. **Williams v. Bethlehem Steel Corp.**, 17 BLR 1-94 (1993).

The Board denied claimant's counsel's request for interest payments from the Black Lung Disability Trust Fund on an award of attorney fees as there is no authority in the Federal Coal Mine Health and Safety Act of 1969, as amended by 30 U.S.C. §901 *et seq.*, or its implementing regulations providing for payment of interest. **Griffin v. Director, OWCP**, 17 BLR 1-75 (1993).

Although the claim had been originally denied at the time that counsel represented claimant and counsel was not representing claimant at the time of a subsequent final award of benefits, since claimant was ultimately successful in establishing entitlement when represented by a subsequent counsel, claimant's original counsel may properly be awarded attorney fees for services rendered before the final award of benefits as he could reasonably have regarded the work he performed as necessary for the successful prosecution of the claim at the time the work was performed and the work was relevant to claimant's success in obtaining benefits, see **Murphy v. Director, OWCP**, 21 BLR 1-116 (1999).

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