

§ 79.74

Once the appeals procedures are completed, an individual whose claim for compensation under the Act is affirmed on appeal may seek judicial review in a district court of the United States.

§ 79.74 Representatives and attorney's fees.

(a) *Representation.* In submitting and presenting a claim to the Program, a claimant or beneficiary may, but need not, be represented by an attorney or by a representative of an Indian Tribe or tribal organization. Non-attorneys (other than representatives of an Indian Tribe or tribal organization) are not permitted to represent claimants or beneficiaries before the Program. To the extent that resources are available, the Assistant Director will provide assistance to all persons who file claims for compensation. Only qualified attorneys, as described in paragraph (c) of this section, may receive from a claimant or beneficiary any fee in connection with a successful claim.

(b) *Fees.* (1) Notwithstanding any contract, the attorney of a claimant or beneficiary, along with any assistants or experts retained by the attorney on behalf of the claimant or beneficiary, may not receive from a claimant or beneficiary any fee for services rendered, including costs incurred, in connection with an unsuccessful claim.

(2) Notwithstanding any contract and except as provided in paragraph (b)(3) of this section, the attorney of a claimant or beneficiary, along with any assistants or experts retained by the attorney on behalf of the claimant or beneficiary, may receive from a claimant or beneficiary no more than 2% of the total award for all services rendered, including costs incurred, in connection with a successful claim.

(3)(i) If an attorney entered into a contract with the claimant or beneficiary for services before July 10, 2000, with respect to a particular claim, then that attorney may receive up to 10% of the total award for services rendered, including costs incurred, in connection with a successful claim.

(ii) If an attorney resubmits a previously denied claim, then that attorney may receive up to 10% of the total award to the claimant or beneficiary for services rendered, including costs

incurred, in connection with that subsequently successful claim. Resubmission of a previously denied claim includes only those claims that were previously denied and refiled under the Act.

(4) Any violation of paragraph (b) of this section shall result in a fine of not more than \$5,000.

(c) *Attorney qualifications.* An attorney may not represent a claimant or beneficiary unless the attorney is engaged in the private practice of law and an active member in good standing of the bar of the highest court of a state. Attorneys who are members of multiple state bars, and who are suspended, sanctioned, disbarred, or disqualified from the practice of law for professional misconduct in one state may not represent a claimant or beneficiary even though the attorney continues to remain in good standing of the bar of another state. If a claimant or beneficiary is represented by an attorney, then the attorney must submit the following documents to the Program along with the claim:

(1) A statement of the attorney's active membership in good standing of the bar of the highest court of a state; and

(2) A signed representation agreement, retainer agreement, fee agreement, or contract, documenting the attorney's authorization to represent the claimant or beneficiary. The document must acknowledge that the Act's fee limitations are satisfied.

§ 79.75 Procedures for payment of claims.

(a) All awards for compensation are made in the form of one time lump sum payments and shall be made to the claimant or to the legal guardian of the claimant, unless the claimant is deceased at the time of the payment. In cases involving a claimant who is deceased, payment shall be made to each eligible surviving beneficiary or to the legal guardian acting on his or her behalf, in accordance with the terms and conditions specified in the Act. Once the Program has received the claimant's or eligible surviving beneficiary's election to accept the payment, the Assistant Director shall ensure that the claim is paid within six