

§ 10.625

parent, spouse, or child prevents attendance at the hearing, a postponement may be granted upon proper documentation.

REVIEW BY THE EMPLOYEES' COMPENSATION APPEALS BOARD (ECAB)

§ 10.625 What kinds of decisions may be appealed?

Only final decisions of OWCP may be appealed to the ECAB. However, certain types of final decisions, described in this part as not subject to further review, cannot be appealed to the ECAB. Decisions that are not appealable to the ECAB include: Decisions concerning the amounts payable for medical services, decisions concerning exclusion and reinstatement of medical providers, decisions by the Director to review an award on his or her own motion, and denials of subpoenas independent of the appeal of the underlying decision. In appeals before the ECAB, attorneys from the Office of the Solicitor of Labor shall represent OWCP.

§ 10.626 Who has jurisdiction of cases on appeal to the ECAB?

While a case is on appeal to the ECAB, OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal. The OWCP continues to administer the claim and retains jurisdiction over issues unrelated to the issue or issues on appeal and issues which arise after the appeal as a result of ongoing administration of the case. Such issues would include, for example, the ability to terminate benefits where an individual returns to work while an appeal is pending at the ECAB.

Subpart H—Special Provisions

REPRESENTATION

§ 10.700 May a claimant designate a representative?

(a) The claims process under the FECA is informal. Unlike many workers' compensation laws, the employer is not a party to the claim, and OWCP acts as an impartial evaluator of the evidence. Nevertheless, a claimant may appoint one individual to represent his

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or her interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 10.701).

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant. Any notice requirement contained in this part or the FECA is fully satisfied if served on the representative, and has the same force and effect as if sent to the claimant.

§ 10.701 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under the FECA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A Federal employee may act as a representative only:

(a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or

(b) While acting as a union representative, defined as any officially sanctioned union official, and no fee or gratuity is charged.

§ 10.702 How are fees for services paid?

A representative may charge the claimant a fee and other costs associated with the representation before OWCP. The claimant is solely responsible for paying the fee and other charges. The claimant will not be reimbursed by OWCP, nor is OWCP in any way liable for the amount of the fee.

Administrative costs (mailing, copying, messenger services, travel and the

like, but not including secretarial services, paralegal and other activities) need not be approved before the representative collects them. Before any fee for services can be collected, however, the fee must be approved by the Secretary. (Collecting a fee without this approval may constitute a misdemeanor under 18 U.S.C. 292.)

§ 10.703 How are fee applications approved?

(a) *Fee Application.* (1) The representative must submit the fee application to the district office and/or the Branch of Hearings and Review, according to where the work for which the fee is charged was performed. The application shall contain the following:

(i) An itemized statement showing the representative's hourly rate, the number of hours worked and specifically identifying the work performed and a total amount charged for the representation (excluding administrative costs).

(ii) A statement of agreement or disagreement with the amount charged, signed by the claimant. The statement must also acknowledge that the claimant is aware that he or she must pay the fees and that OWCP is not responsible for paying the fee or other costs.

(2) An incomplete application will be returned with no further comment.

(b) *Approval where there is no dispute.* Where a fee application is accompanied by a signed statement indicating the claimant's agreement with the fee as described in paragraph (a)(1)(ii) of this section, the application is deemed approved.

(c) *Disputed requests.* (1) Where the claimant disagrees with the amount of the fee, as indicated in the statement accompanying the submittal, OWCP will evaluate the objection and decide whether or not to approve the request. OWCP will provide a copy of the request to the claimant and ask him or her to submit any further information in support of the objection within 15 days from the date the request is forwarded. After that period has passed, OWCP will evaluate the information received 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.

(2) Where the claimant disputes the representative's request and files an objection with OWCP, an appealable decision will be issued.

THIRD PARTY LIABILITY

§ 10.705 When must an employee or other FECA beneficiary take action against a third party?

(a) If an injury or death for which benefits are payable under the FECA is caused, wholly or partially, by someone other than a Federal employee acting within the scope of his or her employment, the claimant can be required to take action against that third party.

(b) The Office of the Solicitor of Labor (SOL) is hereby delegated authority to administer the subrogation aspects of certain FECA claims for OWCP. Either OWCP or SOL can require a FECA beneficiary to assign his or her claim for damages to the United States or to prosecute the claim in his or her own name.

§ 10.706 How will a beneficiary know if OWCP or SOL has determined that action against a third party is required?

When OWCP determines that an employee or other FECA beneficiary must take action against a third party, it will notify the employee or beneficiary in writing. If the case is transferred to SOL, a second notification may be issued.

§ 10.707 What must a FECA beneficiary who is required to take action against a third party do to satisfy the requirement that the claim be "prosecuted"?

At a minimum, a FECA beneficiary must do the following:

(a) Seek damages for the injury or death from the third party, either through an attorney or on his or her own behalf;