

unless he or she has been disqualified from representing claimants under the Act pursuant to 33 U.S.C. 931(b)(2)(C), or unless authority to appear has been denied pursuant to §802.202(e)(1) and (3). An attorney's own representation that he or she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Board.

(2) *Persons not attorneys.* Any person who is not an attorney at law may be admitted to appear in a representative capacity unless he or she has been disqualified from representing claimants under the Act pursuant to 33 U.S.C. 931(b)(2)(C). An application by a person not an attorney at law for admission to appear in a proceeding shall be submitted in writing to the Board at the time such person's appearance is entered. The application shall state such person's name, address, telephone number, general education, any special training or experience in claims representation, and such person's relationship, if any, to the party being represented. The Board may, at any time, make further inquiry as to the qualification or ability of such person to render assistance. In the event of a failure to make application for admission to appear, the Board shall issue an order to show cause why admission to appear should not be denied. Admission to appear in a particular case shall not be deemed a blanket authorization to appear in other cases.

(e) *Denial of authority to appear*—(1) *Attorneys.* The Board may deny the privilege of appearing to any attorney, within applicable statutory constraints, e.g., 5 U.S.C. 555, who has been disbarred or suspended from the practice of law; who has surrendered his or her license while under investigation or under threat of disciplinary action; or who, after notice of an opportunity for hearing in the matter is found by the Board to have engaged in any conduct which would result in the loss of his or her license. No provision hereof shall apply to any attorney who appears on his or her own behalf.

(2) *Persons not attorneys.* The Board may deny the privilege of appearing to any person who, in the Board's judgment, lacks sufficient qualification or ability to render assistance. No provi-

sion hereof shall apply to any person who appears on his or her own behalf.

(3) Denial of authority to appear may be considered, after notice of and opportunity for a hearing, by the panel (constituted pursuant to §801.301) which is assigned to decide the appeal in which the attorney or other person has entered an appearance. If such proceeding reveals facts suggesting that one of the circumstances described in 33 U.S.C. 931(b)(2)(C) exists, the Board shall refer that information to the Director, OWCP, for further proceedings pursuant to 33 U.S.C. 931(b)(2)(C) and 907(j). An attorney or other person may appeal a panel's decision to deny authority to appear to the entire permanent Board sitting en banc.

[52 FR 27292, July 20, 1987, as amended at 53 FR 16519, May 9, 1988]

§ 802.203 Fees for services.

(a) No fee for services rendered on behalf of a claimant in the successful pursuit or successful defense of an appeal shall be valid unless approved pursuant to 33 U.S.C. 928, as amended.

(b) All fees for services rendered in the successful pursuit or successful defense of an appeal on behalf of a claimant shall be subject to the provisions and prohibitions contained in 33 U.S.C. 928, as amended.

(c) Within 60 days of the issuance of a decision or non-interlocutory order by the Board, counsel or, where appropriate, representative for any claimant who has prevailed on appeal before the Board may file an application with the Board for a fee. Where the Board remands the case and the administrative law judge on remand issues an award, a fee petition may be filed within 60 days of the decision on remand. In the event that a claimant who was unsuccessful before the Board prevails on appeal to the court of appeals, his or her representative may within 60 days of issuance of the court's judgment file a fee application with the Board for services performed before the Board.

(d) A fee application shall include only time spent on services performed while the appeal was pending before the Board and shall be complete in all respects, containing all of the following specific information:

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(1) A complete statement of the extent and character of the necessary work done;

(2) The professional status of each person for whom a fee is claimed who performed services on behalf of the claimant (if such professional status is other than attorney, a definition of the professional status of such individual must be included in the fee petition, including a statement of that individual's professional training, education and experience) and a statement that the attorney was a member in good standing of a state bar at the time the services were performed;

(3) The number of hours, in ¼ hour increments, devoted by each person who performed services on behalf of the claimant and the dates on which such services were performed in each category of work;

(4) The normal billing rate for each person who performed services on behalf of the claimant. The rate awarded by the Board shall be based on what is reasonable and customary in the area where the services were rendered for a person of that particular professional status.

(e) Any fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, the amount of benefits awarded, and, when the fee is to be assessed against the claimant, shall also take into account the financial circumstances of the claimant. A fee shall not necessarily be computed by multiplying time devoted to work by an hourly rate.

(f) No contract pertaining to the amount of a fee shall be recognized.

(g) A fee application shall be served on all other parties and accompanied by a certificate of service. The Board will not take action on the fee application until such service is effected. Any party may respond to the application within 10 days of receipt of the application. The response shall be filed with the Board and served on all other parties.

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NOTICE OF APPEAL

§ 802.204 Place for filing notice of appeal.

Any notice of appeal shall be sent by mail to the U.S. Department of Labor, Benefits Review Board, P.O. Box 37601, Washington, DC 20013-7601, or otherwise presented to the Clerk of the Board at 200 Constitution Avenue, NW., Room S-5220, Washington, DC 20210. A copy shall be served on the deputy commissioner who filed the decision or order being appealed and on all other parties by the party who files a notice of appeal. Proof of service of the notice of appeal on the deputy commissioner and other parties shall be included with the notice of appeal.

[52 FR 27292, July 20, 1987, as amended at 56 FR 54538, Oct. 22, 1991; 62 FR 10666, Mar. 7, 1997]

§ 802.205 Time for filing.

(a) A notice of appeal, other than a cross-appeal, must be filed within 30 days from the date upon which a decision or order has been filed in the Office of the Deputy Commissioner pursuant to section 19(e) of the LHWCA or in such other office as may be established in the future (see §§ 702.349 and 725.478 of this title).

(b) If a timely notice of appeal is filed by a party, any other party may initiate a cross-appeal by filing a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time prescribed by paragraph (a) of this section, whichever period last expires. In the event that such other party was not properly served with the first notice of appeal, such party may initiate a cross-appeal by filing a notice of appeal within 14 days of the date that service is effected.

(c) Failure to file within the period specified in paragraph (a) or (b) of this section (whichever is applicable) shall foreclose all rights to review by the Board with respect to the case or matter in question. Any untimely appeal will be summarily dismissed by the Board for lack of jurisdiction.