BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JOAQUIN ARREDONDO, JR.	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 193,986;
NATIONAL BEEF PACKING COMPANY	)	196,210; & 196,451
Respondent	)	
AND	)	
	)	
WAUSAU INSURANCE COMPANIES	)	
Insurance Carrier	)	

ORDER

Claimant's former attorney requested review of the Order regarding attorney fees and expenses dated February 28, 1997, entered by Special Administrative Law Judge Bradley E. Ambrosier.

APPEARANCES

Only Lawrence M. Gurney of Wichita, Kansas, claimant's current attorney, and C. Albert Herdoiza of Kansas City, Kansas, claimant's former attorney, submitted briefs to the Appeals Board. There were no other appearances.

RECORD AND STIPULATIONS

There is no transcript of proceedings for the February 28, 1997, hearing before the Special Administrative Law Judge. For purposes of this review, the record consists of the transcript of the settlement hearing before Special Administrative Law Judge Bradley E. Ambrosier on October 23, 1996, and the exhibits attached thereto. At that hearing the attorneys made certain representations and stipulations which need not be specified. The claimant's current attorney presented the claim of Mr. Herdoiza for expenses and attorney

fees. Mr. Gurney announced that he and Mr. Herdoiza would come to some understanding about a division of fees or the issue would be set for a subsequent hearing. The Special Administrative Law Judge approved attorney fees in the requested amount but requested further itemization of the expenses for which the claimant's attorneys were seeking reimbursement. A hearing on February 28, 1997, apparently followed which resulted in the Order which is the subject of this appeal.

ISSUES

It appears from the language in his February 28, 1997, Order that the only issue before the Special Administrative Law Judge was the expense request of claimant's former attorney. The Special Administrative Law Judge approved Mr. Herdoiza's out-of-pocket expenses in the sum of $606.24; however, the Special Administrative Law Judge requested further explanation for certain interpreter expenses and for a category of expenses referred to as "general office expenses." Claimant's former attorney requested the Appeals Board to review that Order. The Application for Review by the Kansas Workers' Compensation Board and Docketing Statement filed by claimant's former attorney lists the following issues:

> "1. Based upon the facts contained in the record of this case and the applicable law, claimant submits that the court erred by exercising authority to approve or disapprove expenses incurred in litigation.
>
> "2. That the [Special] Administrative Law Judge lacked jurisdiction to review itemized expenses and general expenses of claimant's attorney as part of the process of reviewing and approving attorneys fees.
>
> "3. That the [Special] Administrative Law Judge lacked jurisdiction to review 'sua sponte' and without request of the claimant, the itemized expenses and general expenses of claimant's attorney.
>
> "4. That it is not the practice nor within the jurisdiction of this Special Administrative Law Judge nor any other Special or Regular Administrative Law Judge in Kansas to review the itemized expenses and general expenses of any claimant's attorneys.
>
> "5. Due to the Special Administrative Law Judge's action, claimant's attorneys fees and itemized expenses have been held in trust since the settlement hearing was heard in Liberal, Kansas. Although the attorneys fees were approved in full and an agreement has been reached between counsel for the disbursement of the attorneys fees, attorney Lawrence M. Gurney has been directed by the Special Administrative Law Judge to hold attorney Herdoiza's attorneys fees in trust as well.

> "6. That the Special Administrative Law Judge has caused needless delay in the disbursement of funds in this matter which constitutes an abuse of discretion."

The relief sought by claimant's former attorney is stated as :

> "Claimant respectfully requests the Workers' Compensation Board to stay the Order of February 28, 1997 and to direct the Special Administrative Law Judge to cease and desist from further review of litigation expenses in claimant's attorneys cases and further that an Order be issued allowing claimant's attorney to obtain itemized and general expenses in this case."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and the briefs submitted by counsel, the Appeals Board finds as follows:

The Order should be affirmed.

Claimant's former attorney cites no authority for his position that a special administrative law judge lacks authority to approve or disapprove expenses incurred during litigation as a part of the process of reviewing and approving attorney fees. Claimant's current counsel submits that the Special Administrative Law Judge did have the authority to issue the Order entered herein. The Appeals Board agrees.

Disputes regarding attorney fees are addressed in K.S.A. 44-536(h). In Madison v. Goodyear Tire & Rubber Co., 8 Kan. App. 2d 575, 663 P.2d 663 (1983) the Court held:

> "When resolving disputes under 44-536(h), the director of workers' compensation has the power and discretion to apportion fees in a reasonable and proper manner, considering the particular circumstances of each case." 8 Kan. App. 2d at 581.

Special local administrative law judges are statutorily authorized by K.S.A. 1996 Supp. 44-551(d). That statute provides that they shall "exercise the same powers as provided by this section for the regular administrative law judges."

K.S.A. 1996 Supp. 44-551(b)(1) states:

"(b) (1) Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents and records to the same extent as is conferred on the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges." (Emphasis added.)

K.S.A. 44-536(b) provides:

"(b) All attorney fees in connection with the initial or original claim for compensation shall be fixed pursuant to a written contract between the attorney and the employee or the employee's dependents, which shall be subject to approval by the director in accordance with this section. Every attorney, whether the disposition of the original claim is by agreement, settlement, award, judgment or otherwise, shall file the attorney contract with the director for review in accordance with this section. The director shall review each such contract and the fees claimed thereunder as provided in this section and shall approve such contract and fees only if both are in accordance with all provisions of this section. Any claims for attorney fees not in excess of the limits provided in this section and approved by the director shall be enforceable as a lien on the compensation due or to become due. The director shall specifically and individually review each claim of an attorney for services rendered under the workers compensation act in each case of a settlement agreement under K.S.A. 44-521 and amendments thereto or a lump-sum payment under K.S.A. 44-531 and amendments thereto as to the reasonableness thereof. In reviewing the reasonableness of such claims for attorney fees, the director shall consider the other provisions of this section and the following:

(1) The written offers of settlement made prior to representation;

(2) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly;

(3) the likelihood, if apparent to the employee or the employee's dependents, that the acceptance of the particular case will preclude other employment by the attorney;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount of compensation involved and the results obtained;

(6) the time limitations imposed by the employee, by the employee's dependents or by the circumstances;

(7) the nature and length of the professional relationship with the employee or the employee's dependents; and

(8) the experience, reputation and ability of the attorney or attorneys performing the services."

The Appeals Board finds that reimbursement of litigation expenses are part of the attorney's contract with the claimant and are thus subject to review by the director. In this case it was claimant's former attorney who was asserting a lien for fees and expenses against the claimant's settlement proceeds. The reasonableness of that request was an issue properly before the Special Administrative Law Judge at the settlement hearing.

Also, in his letter brief to the Appeals Board, claimant's former attorney states that the Special Administrative Law Judge has not questioned the expenses of other attorneys and alleges that he was singled out by the Special Administrative Law Judge "for this type of treatment." It is not clear what purpose these comments could be intended to serve unless to show bias or prejudice on the part of the Special Administrative Law Judge. If that is the purpose, then this is not the method by which such a concern is to be raised. *See* Dixon v. United Parcel Service, Docket No. 206,758 (June 1996) and Henning v. Fort Scott Family Physicians, Docket No. 147,308 (June 1996).

Finally, former counsel for claimant argues that the Special Administrative Law Judge has caused needless delay in the disbursement of funds in this matter and that this constitutes an abuse of discretion. The statutes regulating attorney fees under the Workers Compensation Act were not enacted for the benefit of the attorney; rather, they were enacted to enable claimants to obtain competent counsel. They are part of a statutory scheme intended primarily to benefit injured workers by securing prompt payment of the benefits provided by the Act. *See* Hatfield v. Wal-Mart Stores, Inc., 14 Kan. App. 2d 193, 786 P.2d 618 (1990). It appears from the limited record that the only disbursement that has been delayed in this matter is the amount necessary to cover the claim for attorney fees and expenses. We do not find any order directing claimant's counsel to otherwise withhold disbursing the settlement proceeds to claimant. Be that as it may, the Special Administrative Law Judge's Order of February 28, 1997, provides that claimant's former attorney is to provide an itemization of expenses within 10 days. It further states that "if such an itemization is not provided within 10 days, the same will be disallowed." This order does not cause or create an unreasonable delay.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Special Administrative Law Judge Bradley E. Ambrosier dated February 28, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
C. Albert Herdoiza, Kansas City, KS
James H. Morain, Liberal, KS
Bradley E. Ambrosier, Special Administrative Law Judge
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director