

WAC 263-12-165 Attorney's fees. (1) Applications for attorney's fees.

(a) For the fixing of attorney fees as provided by RCW 51.52.120, the board shall fix a reasonable attorney fee to be paid by the worker, crime victim or beneficiary for services rendered before the board, or before the department in a claim resolution settlement agreement, if written application therefor is made by the attorney, worker, crime victim or beneficiary, within one year after the board's final decision and order, or approval of the claim resolution settlement agreement, is communicated to the party making the application. If such application for fixing of a fee is made by the attorney, it shall set forth therein the monetary amount which the attorney considers reasonable for all services rendered before the board in an appeal, or before the department in a claim resolution settlement agreement, and the justification supporting the requested fee. The board shall afford to all parties affected a minimum of 10 days in which to submit comments and material information which may be helpful to the board in setting a fair and reasonable fee.

(b) For the ordered payment of attorney fees as provided by RCW 51.32.185 and 51.32.187, the board shall set the attorney fee in a manner consistent with applicable provisions of subsections (2) and (3) of this section.

(2) **Fee fixing criteria.** All attorney fees fixed by the board, where application therefor has been made, shall be established in accordance with Rule 1.5 of the Rules of Professional Conduct and the following general principles:

(a) Only one fee shall be fixed for legal services in any one appeal or claim resolution settlement agreement regardless of the number of attorneys representing the worker, crime victim or beneficiary, except that in cases of multiple beneficiaries represented by one or multiple attorneys the board has the discretion to set more than one attorney fee if so requested.

(b) The board shall defer fixing a fee until such time as information, which it deems sufficient upon which to base a fee, is available.

(c) A fee shall be fixed only in those cases where the attorney's services are instrumental in securing additional benefits to the worker, crime victim or beneficiary, sustaining the worker's or beneficiary's right to benefits upon an appeal by another party, or in securing a claim resolution settlement agreement.

(d) Where increased compensation is obtained, the fee may be fixed without regard to any medical benefits secured.

(e) In setting all fees, the following factors shall be carefully considered and weighed:

(i) Nature of the appeal or the claim resolution settlement agreement.

(ii) Novelty and complexity of the issues presented or other unusual circumstances.

(iii) Time and labor expended.

(iv) Skill and diligence in conducting the case or in securing the claim resolution settlement agreement.

(v) Extent and nature of the relief. In computing the extent of additional benefits, or the retention of benefits awarded by the department, the cost to the worker, crime victim or beneficiary of the litigation, i.e., medical examination and witness fees, shall be first deducted and the net benefits considered.

(vi) The amount of accrued time-loss payments as a result of proceedings before the board.

(vii) The prevalent practice of charging contingency fees in cases before the board.

(viii) The worker's or crime victim's circumstances and the remedial social purposes of the Industrial Insurance Act and of the Crime Victims Compensation Act, which are intended to provide sure and adequate relief to injured workers and crime victims and their families.

(f) In those cases where the payment of accumulated benefits is insufficient to allow payment of the fee set and allow the worker, crime victim or beneficiary to retain a reasonable monetary amount, the board may also set the schedule and manner in which such fee shall be payable.

(3) Amount of fees.

(a) Where additional compensation for permanent partial disability, loss of earning power, or total temporary disability is obtained as a result of settlement of the appeal on agreement of the parties prior to presentation of testimony, a fee of from 10 to 25 percent of the increased compensation due the worker, crime victim or beneficiary on the date of the board's order on agreement of the parties and by reason thereof shall be fixed after considering all factors.

(b) Where additional compensation for permanent partial disability, loss of earning power or total temporary disability is obtained after the presentation of testimony, a fee of from 10 to 30 percent of the increased compensation shall be fixed after considering all factors. This provision shall also apply to retroactive permanent total disability (pension) benefits.

(c) Where no additional compensation is obtained, but the worker or crime victim is relieved of the payment for medical benefits, a fee of from 10 to 25 percent of the amount the worker or crime victim is so relieved of paying shall be fixed after considering all factors.

(d) Where permanent total disability (pension) benefits are obtained for survivors of a deceased worker or crime victim, or death benefits are obtained for survivors of a deceased worker or crime victim, 10 percent of the first \$40,000.00 of the pension reserve as calculated by the department of labor and industries, and 15 percent of the pension reserve in excess of \$40,000.00 shall constitute the usual fee, which may be decreased or increased after weighing all factors.

(e) Where indeterminate additional compensation is obtained because the claimant is successful in establishing a proper claim for benefits which was previously rejected or for which responsibility was denied, a fee in accordance with the preceding principles and factors shall be fixed.

(f) Where, upon an appeal by a party other than the worker or his or her beneficiary, the right to receive the benefits awarded by the department is affirmed, a fee in accordance with the preceding principles and factors shall be fixed.

(g) Where a claim resolution settlement agreement is approved by the board, fees for attorney's services are limited to 15 percent of the total amount to be paid to the worker after the agreement becomes final.

(h) When a firefighter, law enforcement officer, or Hanford site worker has prevailed and the final decision is to allow the claim, making the opposing party responsible for the payment of reasonable costs, including attorney fees, the fees may be established based on an hourly rate.

(i) The number of hours expended must be supported by documentation. The board will disregard inflated hours or hours reflecting reimbursement for clerical functions.

(ii) All requests for costs must be accompanied by invoices and documentation including hourly breakdowns where applicable.

(4) **Excess fee unlawful.** Where the board, pursuant to written application by an attorney, worker, crime victim or beneficiary, fixes a reasonable fee for the services of the attorney in proceedings before this board, or before the department in securing a claim resolution settlement agreement, it is unlawful for the attorney to charge or receive any fee for such services in excess of that fee so fixed, per RCW 51.52.132.

[Statutory Authority: RCW 51.52.020. WSR 22-14-024, § 263-12-165, filed 6/24/22, effective 7/25/22; WSR 18-24-123, § 263-12-165, filed 12/5/18, effective 1/5/19; WSR 11-23-154, § 263-12-165, filed 11/22/11, effective 12/23/11; WSR 08-01-081, § 263-12-165, filed 12/17/07, effective 1/17/08; WSR 95-12-062, § 263-12-165, filed 6/5/95, effective 7/6/95; WSR 91-13-038, § 263-12-165, filed 6/14/91, effective 7/15/91; WSR 82-03-031 (Order 11), § 263-12-165, filed 1/18/82; Order 7, § 263-12-165, filed 4/4/75; Order 4, § 263-12-165, filed 6/9/72; Subsection 1 from General Order 3, Rule 9.1, filed 10/29/65; General Order 2, Rule 9.2, filed 6/12/63; General Order 1, Rule 6.4, filed 3/23/60; Subsection (2), General Order 3, Rule 9.2, filed 10/29/65; General Order 9.1, filed 6/12/63; General Order 1, Rule 6.4, filed 3/23/60. Formerly WAC 296-12-165.]