

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
In the Matter of A.S., Appellant)	
)	
and)	Docket No. 16-1082
)	Issued: April 13, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
DAYTON VETERANS MEDICAL CENTER,)	
Dayton, OH, Employer)	
_____)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING FEE PETITION

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge

Counsel for appellant has filed a fee petition in the amount of \$2,433.50.¹ The Board notes that all petitions for approval of fees for representative's services are considered under the Board's statutory authority found at section 8127 of the Federal Employees' Compensation Act,² (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

Pursuant to its regulations, the Board considers fee petitions under the following general criteria:

- (1) The usefulness of the Representative's services;⁴

¹ FECA (5 U.S.C. § 8127(b)) and its implementing regulations (20 C.F.R. § 501.9) clearly require the Board to review each fee petition on its own merits and with regard to the unique facts and issues of each appeal. The recognition that each appeal to the Board has unique aspects is reflected in the Board's orders granting or denying fee petitions.

² 5 U.S.C. § 8127.

³ 20 C.F.R. § 501.9(e).

⁴ The Board's consideration of "usefulness" includes, but is not limited to, the frequency and quality of communication by the representative with the client, the factual evidence and legal argument offered and written pleadings filed in the case. The Board will also consider the usefulness of a representative's work as it aided the Board in its consideration and decision of the issue appealed.

- (2) The nature and complexity of the appeal;⁵
- (3) The capacity in which the Representative has appeared;⁶
- (4) The actual time spent in connection with the Board appeal;⁷ and
- (5) Customary local charges for similar services.⁸

As required by the Board's regulations, appellant has been afforded written notice of the fee requested and provided an opportunity to comment on the fee petition.⁹ No response was received.

The requested fees pertain to services performed before the Board in the above-referenced appeal. In its September 6, 2017 decision, the Board found that OWCP properly denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. The Board affirmed OWCP's April 11, 2016 decision.

On appeal, counsel submitted a seven-page brief in support of the appeal which contained supporting legal citation. He argued that Board precedent supported finding that appellant had established clear evidence of error as OWCP had failed to give appellant sufficient notice before terminating her monetary benefits under 5 U.S.C. § 8106(c).

OWCP's decision on appeal was dated April 11, 2016 and the appeal was filed with the Board on April 27, 2016. The fee petition requests approval of time from April 26, 2016 through September 8, 2017, and documents 6.10 hours spent in connection with this appeal before the Board. This is comprised of 3.5 hours at \$475.00 per hour for Daniel M. Goodkin, Esquire, .80 hours spent at \$525.00 per hour for Steven E. Brown, Esquire, .50 hours at \$195.00 per hour for Paralegal Erika Bauer, and 1.30 hours at \$195.00 per hour for Paralegal Jessica Duncan.

The Board has carefully reviewed the fee petition and finds it satisfies the requirements of section 501.9(e) of the Board's implementing regulations.

The Board notes that under 20 C.F.R. § 501.9(e) "[n]o claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board." Under

⁵ The Board's evaluation of the "nature and complexity" of an appeal includes, but is not limited to, whether the issue appealed is novel or required extensive or unusual factual evidence or legal argument. The Board recognizes that not all complex issues are cases of first impression. However, the representative must establish the complex or unusual nature of the appeal.

⁶ The Board's consideration of the "capacity" in which a representative appears includes, but is not limited to, whether the representative obtained a written retainer and fee agreement was obtained.

⁷ The Board's evaluation of an itemized statement of work and charges includes, but is not limited to, whether the statement is clear, detailed, and describes those aspects of the appeal which merit the fee claimed and whether the representative has personally affirmed the correctness of the fee. No stipulated or contingent fee will be approved by the Board. 20 C.F.R. § 501.9(e).

⁸ The Board's consideration of customary, local fees recognizes that representatives often have clients in several states and that local custom must be balanced against national practice in the FECA appeals.

⁹ 20 C.F.R. § 501.9(e).

18 U.S.C. § 292, collecting a fee without the approval of the Board may constitute a misdemeanor, subject to fine or imprisonment for up to a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$2,433.50.

Issued: April 13, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board