

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

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<b>In the Matter of K.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-1598</b>
	)	<b>Issued: July 26, 2023</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer</b>	)	
_____	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Thomas R. Uliase, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**ORDER GRANTING FEE PETITION**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$987.75.<sup>1</sup> The Board notes that all petitions for approval of fees for representative's services are considered under the Board' statutory authority found at section 8127 of the Federal Employees' Compensation Act (FECA),<sup>2</sup> and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> *Id.* at § 8127.

<sup>3</sup> 20 C.F.R. § 501.9(e).

Pursuant to its regulation, the Board considered the fee petition under the following criteria:

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

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.<sup>9</sup> No response was received.

The requested fee pertains to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant met her burden of proof to establish cervical and right hand/wrist conditions causally related to the accepted factors of her federal employment. By decision dated September 10, 2015, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted factors of her federal employment. Appellant continued to pursue her further review rights including hearing before a representative of OWCP's Branch of Hearings and Review and reconsideration by OWCP. In the most recent OWCP decision dated March 19, 2018, OWCP denied modification of its September 22, 2017 decision. By decision dated January 7, 2020, the Board affirmed the March 19, 2018 decision.

On appeal, counsel submitted a six-page brief supporting that appellant had established medical conditions causally related to the accepted factors of her federal employment. In this

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> 20 C.F.R. § 501.9(e).

brief, counsel discussed medical reports of record, presented several legal citations, and made relevant contentions in support of appellant's appeal before the Board.

On July 21, 2022 counsel provided a fee petition requesting approval of fees totaling \$987.75.

OWCP's decision on appeal was dated March 19, 2018 and the appeal was filed with the Board on August 20, 2018. The fee petition requests approval of time from August 14, 2018 through November 4, 2019 and documents 4.18333 hours spent in connection with this appeal before the Board for 2.5 hours at \$300.00 per hour for Russell Uliase, *Esq.*, 1.5 hours at \$150.00 per hour for Alisha Flynn, paralegal, and .1833 hours at \$69.55 per hour for Cheryl Leonardo, secretary. The fee petition described the specific services provided for the amounts of time claimed.

The Board has carefully reviewed the fee petition and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulation. The Board concludes that the fee requested is reasonable.

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 19 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 \$987.75.

Issued: July 26, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board