

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

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In the Matter of E.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Raleigh, NC, Employer)
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Docket No. 19-1296
Issued: July 26, 2023

Appearances:
Daniel F. Read, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING FEE PETITION

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$568.75.¹ 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 Act² (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

Under these regulations, the Board must consider the petition 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 On March 9, 2020 the Clerk of the Board received a signed statement in which appellant indicated that the requested fee of \$586.75 was reasonable and appropriate. Appellant expressed his understanding that he was responsible for payment of the fee.

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated May 9, 2019, the Office of Workers' Compensation Programs (OWCP) denied appellant's occupational disease claim as the evidence of record was insufficient to establish that his diagnosed right knee conditions were causally related to the accepted factors of his federal employment. On May 21, 2019 counsel filed an appeal with the Board. By decision dated December 18, 2019, the Board found the case not in posture for decision as the medical evidence raised an uncontroverted inference between the diagnosed conditions and the accepted employment factors sufficient to require OWCP to further develop the claim. Therefore, it set aside OWCP's May 9, 2019 decision and remanded the case to OWCP for further development.

On March 9, 2020 counsel provided a fee petition and a statement of services requesting approval of fees totaling \$568.75.

OWCP's decision on appeal was dated May 9, 2019 and the appeal was filed with the Board on May 21, 2019. The fee petition requests approval of services from May 14 to December 26, 2019 and documents 3.25 hours spent in connection with this appeal before the Board at \$175.00 per hour for 3.25 hours for Daniel F. Read, Esq. The fee petition described the specific services provided for the amount claimed.

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

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.

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 FECA appeals.

⁹ 20 C.F.R. § 501.9(e).

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

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$568.75.

Issued: July 26, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees’ Compensation Appeals Board

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