

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

_____)	
In the Matter of D.B., Appellant)	
)	
and)	Docket No. 14-1726
)	Issued: March 8, 2024
U.S. POSTAL SERVICE, POST OFFICE, Fort Collins, CO, Employer)	
_____)	

Appearances:
John S. Evangelisti, 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 \$5,710.00.¹ The Board notes that all petitions for approval of fees for representative services are considered under the Board's statutory authority found at section 8127 of the Federal Employees' Compensation Act (FECA)² and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

¹ FECA (5 U.S.C. § 8127(b)) and its implementing regulation (20 C.F.R. § 501.9(e)) 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 *Id.* at § 8127.

³ 20 C.F.R. § 501.9(e).

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

- (1) The usefulness of the Representative's services;⁴
- (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. By decision dated August 1, 2018, the Office of Workers' Compensation Programs (OWCP) found that appellant did not meet his burden of proof to establish a schedule award and reconsideration. By order dated June 23, 2015, the Board granted the Director's motion to remand the case for further development and issue a *de novo* decision.

On May 2, 2018, counsel provided a fee petition and a statement of services requesting approval of fees totaling \$5,710.00. OWCP's decisions on appeal were dated February 11 and August 1, 2014, and the appeal was filed with the Board on August 5, 2018. The fee petition requests approval of time from August 5, 2014 through June 23, 2015 and documents 18 hours spent in connection with this appeal before the Board at \$300.00 per hour for 17.5 hours for John S. Evangelisti, Esq. and \$175.00 per hour for 0.4 hours for Paralegal Jessica Pope. The fee petition described the specific services provided for the amount claimed. Attached to the fee petition is a signed acknowledgement by appellant consenting to the requested fee.

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 by the representative 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.

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 a representative's 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 counsel 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 Federal Employees' Compensation Act appeals.

⁹ 20 C.F.R. § 501.9(e).

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 regulations. 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 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 \$5,710.00.

Issued: March 8, 2024
Washington, DC

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

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