

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

In the Matter of J.C., Appellant)	
)	
and)	Docket No. 21-1216
)	Issued: March 5, 2024
DEPARTMENT OF THE AIR FORCE, 309TH MAINTENANCE SUPPORT SQUADRON, HILLS AIR FORCE BASE, UT, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$12,708.50.¹ 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

¹ FECA (5 U.S.C. § 8127(b)) and its implementing regulation (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 *Id.* at § 8127.

³ 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;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. Attached to the fee petition is a signed acknowledgement by appellant consenting to the fee in the amount of \$12,708.50.

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated February 24, 2021, the Office of Workers' Compensation Programs (OWCP) found that appellant failed to meet his burden of proof to establish total disability from work for the period commencing December 31, 2012 and continuing or from May 26, 2016 and continuing, causally related to his accepted employment-related conditions. By decision dated April 19, 2022, the Board set aside OWCP's February 24, 2021 decision and remanded the case to OWCP for further development. The Board found the opinion of Dr. Leslie J. Harris, a second opinion Board-certified orthopedic surgeon, was generally supportive of appellant's claim for wage-loss compensation, but did not address specific dates of disability or work history following appellant's December 31, 2012 retirement. The case was remanded for OWCP to obtain another supplemental opinion from Dr. Harris to determine whether appellant's disability from work

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.

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).

commencing December 29, 2012 and continuing was causally related to his accepted employment conditions and to issue an appropriate decision.

OWCP's decision on appeal was dated February 24, 2021 and the appeal was filed with the Board on August 10, 2021.

On June 8, 2022 counsel provided a fee petition and a statement of service requesting approval of fees totaling \$12,708.50.

The Board notes that counsel submitted an 18-page brief in support of the appeal. The fee petition requests approval of services from March 3, 2021 through April 20, 2022 and documents 24.15 hours spent in connection with this appeal before the Board at \$560.00 per hour for 21.35 hours for Steven E. Brown, Esq., \$490.00 per hour for 0.70 hours for Daniel M. Goodkin, Esq., \$195.00 per hour for 0.70 hours for paralegal Erika Bauer, and \$195.00 per hour for 1.40 hours for Jessica Watson. 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 *Rules of Procedure*.¹⁰

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.”¹¹ 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.

¹⁰ *Id.*

¹¹ *Id.*

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$12,708.50.

Issued: March 5, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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