

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

In the Matter of N.L., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
JERRY L. PETTIS MEMORIAL VETERANS
AFFAIRS MEDICAL CENTER,
Loma Linda, CA, Employer**

**Docket No. 11-2134
Issued: August 25, 2014**

Appearances:
Steven E. Brown, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING FEE PETITION

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

Counsel for appellant filed a request for approval of attorney fees in the amount of five thousand, nine hundred, fifty-four dollars and fifty cents (\$5,954.50).¹ By order dated May 14, 2014, the Board denied counsel's request and allowed an additional 60 days for the submission of supplementary information to review the request under the Board's regulations at 20 C.F.R. § 501.9.

In this appeal, the Board's September 26, 2012 decision found that appellant had not established that she sustained a recurrence of disability on or after August 20, 2009 causally related to her accepted August 22, 2003 employment injuries. The August 7, 2011 Office of Workers' Compensation Programs' (OWCP) decision was affirmed.

¹ The Federal Employees' Compensation Act (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.

On May 19, 2014 counsel responded to the Board's May 14, 2014 order providing additional information for consideration of the fee request pursuant to section 501.9(e).² He noted that appellant did not contest the reasonableness of the fee.³ Regarding the usefulness of the representative's services, counsel indicated that the issue was whether OWCP had met its burden to terminate benefits since there was a conflict in the medical evidence regarding disability. However, the Board handled the matter as a recurrence of disability. The Board notes that counsel's initial six-page pleading in the appeal cited pertinent case law in support of his arguments.

Counsel noted that the time spent on the appeal was documented and addressed the customary local charges for similar services. He specifically addressed the hourly rates charged by the staff of his law firm in this appeal from September 7, 2011 through September 26, 2013. The legal work outlined and accompanying billing entries for the intake, pleading preparation, a supplemental petition, client contact and post-decision filings appear to be reasonable in the context of the subject matter of the appeal.

However, there are 15 entries on 15 separate dates for what counsel refers to in the billing documents as "office meeting re case status."

09/16/2011	.5 hours	\$ 189.50
10/20/11	.5 hours	\$ 189.50
12/06/11-12/7/11	.5 hours	\$ 189.50
02/01/12	.4 hours	\$ 150.00
03/08/12	.4 hours	\$ 150.00
05/04/12	.4 hours	\$ 150.00
08/15/12	.4 hours	\$ 150.00
09/28/12	.4 hours	\$ 150.00
11/16/12	.5 hours	\$ 190.50
12/18/12	.5 hours	\$ 189.50
01/30/13	.5 hours	\$ 189.50
02/27/13	.5 hours	\$ 199.50
04/10/13	.5 hours	\$ 199.50
05/15/13	.5 hours	\$ 199.50
08/22/13	.4 hours	<u>\$ 157.00</u>
		\$2,643.50

In each of these meetings, which appear on the average of every six weeks, two attorneys and a paralegal are in attendance and bill for their time collectively. Each attendee's

² 20 C.F.R. § 501.9(e).

³ Counsel cited to the provisions of the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Representatives' Services*, Chapter 2.1200.6 (June 2012) and inquired as to whether they pertain to uncontested fees for work performed before the Board. The procedures implemented by the Office of Workers' Compensation Programs (OWCP) with regard to the consideration of fees are separate from the Board's review of such applications under section 501.9(e). OWCP and the Board are two separate and distinct bodies and separate application to the Board is required for approval of a fee for legal or other services performed in connection with an appeal. *Evelyn R. Adams*, 10 ECAB 585 (1959).

participation is described in the exact same fashion. There is no reason or rationale offered for this periodic practice. All of these status conferences took place after the appeal was filed and before the decision was rendered. The Board is at a loss to ascertain what specific work product on behalf of appellant's case was attained. Absent a showing for the purpose and the specific reasons how this assisted appellant in the furtherance of her appeal, the billed amounts for these status conferences are disallowed. With these status conferences totaling almost half of the hours billed and specifically accounting for \$2,643.50 of the total fee requested of \$5,954.50, certainly makes this ripe for Board inquiry. In this regard, the Board will disallow the fees charged in "office meeting re case status" entries totaling two thousand, six hundred, forty-three dollars and fifty cents (\$2,643.50).

The Board will further disallow .10 hours in the amount of \$19.50 by Paralegal Bauer on May 22, 2013 for time spent for "review online ECAB decisions" as it was after the final submission, the supplemental petition dated May 7, 2013 and without further explanation, cannot be allowed. The Board will disallow these hours as excessive and redundant.⁴

This reduces the attorney's fee by two thousand, six hundred, sixty two dollars (\$2,662.00).

Included with the documents submitted to the Board for review of the request for approval of attorney fees was a letter to appellant dated September 27, 2013, requesting payment "at this time." 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 for up to a year or both."

The Board has reviewed the fee petition and additional information submitted by counsel and finds that it otherwise satisfies the requirements of section 501.9(e) of the Board's implementing federal regulations.

⁴ While not directly pertaining to claims under FECA, the Board finds instructive the decision of the United States Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In any fee petition, counsel must use bill judgment and exclude redundant or unnecessary hours and to confirm that the fee requested is not excessive. Adequate documentation should be submitted to support the hours of work performed with specificity or a reasonably precise description of the work performed on behalf of the client.

ORDER

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of three thousand, two hundred, ninety-two dollars and fifty cents (\$3,292.50).

Issued: August 25, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board