

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

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**In the Matter of J.G., Appellant**

**and**

**DEPARTMENT THE ARMY,  
Fort Carson, CO, Employer**

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**Docket No. 12-1588  
Issued: April 28, 2016**

*Appearances:*

*John S. Evangelisti, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER GRANTING FEE PETITION**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$5,835.50.<sup>1</sup> He filed the request under the Office of Workers' Compensation Programs' (OWCP) regulations, pursuant to 20 C.F.R. § 10.703 and noted that, as appellant was in agreement with the fees, the application was deemed approved. 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,<sup>2</sup> (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).<sup>3</sup> There is no option for the fees to be "deemed approved" under the Board's regulations.

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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> 5 U.S.C. § 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>

By order dated May 15, 2014, the Board denied counsel's fee petition as it had failed to adequately delineate or describe the services performed, identify by name the persons identified in the itemized statement, specify the hourly rate of billing for the persons identified in the statement, and otherwise failed to explain in detail how the claimed fee was justified under the five factors listed above. Counsel was permitted 60 days to resubmit the fee petition.

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 fees pertain to services performed before the Board in the above-referenced appeal. In the decision dated August 20, 2013, the Board reversed OWCP's January 18, 2012 decision affirming an April 15, 2011 loss of wage-earning capacity decision and remanded the case regarding appellant's claim for partial disability as of March 1, 2007.

On appeal counsel submitted a 15-page brief addressing the issues on appeal. He cited many legal authorities in support of his arguments, including 20 C.F.R. §§ 501.2(c) and 10.138 regarding the appropriate standard of review. Counsel also identified and argued medical evidence to challenge OWCP's retroactive wage-earning capacity decision.

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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 was obtained.

<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).

On June 11, 2014 counsel provided a supplemental fee petition addressing the deficiencies previously noted by the Board. He clarified the exact amounts that were being claimed for work before the Board, and provided an affidavit from appellant, dated September 6, 2013, finding the fee reasonable. Counsel addressed the usefulness of his services noting that he was successful in his argument, as the Board had reversed the decision of OWCP. He also discussed his communication with appellant during the representation before the Board and addressed the customary local charges for similar services. Counsel specifically addressed the hourly rates charged by the staff of his law firm.

OWCP's decisions on appeal were dated January 18 and June 21, 2012, the appeal was filed with the Board on July 13, 2012 and a supporting brief was filed with the Board on January 22, 2013. The fee petition requests approval of time from June 29, 2012 through February 5, 2013 and documents 32.50 hours spent in connection with this appeal before the Board at \$300.00 per hour for John S. Evangelisti, Esquire, \$225.00 per hour for Christopher Lopez, Esquire, and \$175.00 per hour for Paralegal Jodi Waldron.

The Board has carefully reviewed the fee petition and finds 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 19 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 \$5,835.50.

Issued: April 28, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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