

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

In the Matter of K.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Castle Rock, CO, Employer**

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**Docket No. 15-0960
Issued: December 7, 2017**

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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

Counsel for appellant has filed a fee petition in the amount of \$10,290.00.¹ 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 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).

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.

The requested fees pertain to services performed before the Board in the above-referenced appeal. In the decision dated March 9, 2016, the Board reversed OWCP's November 4, 2014 decision affirming a January 2, 2014 OWCP decision terminating appellant's wage-loss compensation and medical benefits.

On appeal counsel submitted a 22-page brief and attachments addressing the issues on appeal. He cited many legal authorities in support of his arguments and identified and argued medical evidence to challenge OWCP's termination of compensation.

In his fee petition, counsel addressed the exact amounts that were being claimed for work before the Board, and provided a May 6, 2015 letter detailing the fee agreement between counsel and appellant. 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

⁴ The Board's consideration of "usefulness" includes, but is not limited to, the frequency and quality of communication by the attorney with the client, the factual evidence and legal argument offered by the attorney and written pleadings filed in the case. The Board will also consider the usefulness of an attorney'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 attorney must establish the complex or unusual nature of the appeal.

⁶ The Board's consideration of the "capacity" in which an attorney appears includes, but is not limited to, whether the attorney obtained a written retainer and fee agreement.

⁷ The Board's evaluation of an attorney'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 attorneys 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).

customary local charges for similar services. Counsel specifically addressed the hourly rates charged by the staff of his law firm.

OWCP's decision on appeal was dated November 4, 2014, the appeal was filed with the Board on March 26, 2015, and a supporting brief was filed with the Board on May 5, 2015. The fee petition requests approval of time from November 13, 2014 through October 26, 2015 and documents 34.90 hours spent in connection with this appeal before the Board at \$350.00 per hour for John S. Evangelisti, Esquire, \$275.00 per hour for Christopher Lopez, Esquire, and \$175.00 per hour for Paralegal Jodi Waldron.¹⁰

Counsel attached a May 6, 2015 fee agreement from Mr. Evangelisti which appellant signed on October 7, 2015. The fee agreement indicated Mr. Evangelisti's hourly rate was \$250.00, the hourly rate for associates was \$175.00 and the hourly rate for paralegals was \$75.00. The fee petition charges for higher hourly rates than those in the fee agreement. It listed 10.10 hours at \$350.00 per hour (or \$3,535.00) for Mr. Evangelisti, 24.50 hours at \$275.00 per hour (or \$6,737.50) for Mr. Lopez, and .10 hours at \$175.00 per hour or \$17.50 for Ms. Waldron resulting in a total fee request of \$10,290.00. Based on the fee agreement appellant signed on October 7, 2015, however, the Board will reduce the fee to reflect the hourly rates set forth in the fee agreement. Nothing was submitted to the Board to justify the increase in fees. The Board will approve 10.10 hours at \$250.00 per hour (or \$2,525.00) for Mr. Evangelisti, 24.50 hours at \$175.00 per hour (or \$4,287.50) for Mr. Lopez, and .10 hours at \$75.00 per hour (or \$7.50) for Ms. Waldron resulting in a total fee request of \$6,820.00.

The Board has carefully reviewed the fee petition and finds it, as modified, otherwise satisfies the requirements of section 501.9(e) of the Board's implementing regulations.

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.

¹⁰ No fee was charged for .10 hours of professional services rendered on October 9, 2015 and .10 hours rendered on December 9, 2014 by Mr. Evangelisti.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$6,820.00.

Issued: December 7, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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