

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

In the Matter of K.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Riverview, FL, Employer**

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**Docket No. 16-0404
Issued: December 20, 2017**

Appearances:

*Daniel M. Goodkin, 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 \$1,598.50.¹ 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

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

- (1) The usefulness of the Representative's services;⁴

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).

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.

- (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. No response was received.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant met her burden of proof to establish a consequential emotional condition due to an April 17, 2012 employment injury. By decision dated September 17, 2015, OWCP denied appellant's claim for a consequential emotional condition. By decision dated April 11, 2016, the Board affirmed the September 17, 2015 decision.

On appeal counsel had submitted a five-page brief addressing the factual and medical history of the case and presented Board precedent addressing the burden of proof regarding consequential claims and emotional condition claims. He argued that the medical evidence established that appellant's diagnosed emotional condition was caused by the April 17, 2012 employment injury. Counsel requested that the Board expand the claim to include major depression and anxiety disorder.

On May 16, 2016 counsel provided a fee petition and statement of service.

OWCP's decision on appeal was dated September 17, 2015, and the appeal was filed with the Board on December 22, 2015. The Board issued its decision on April 11, 2016. The fee petition requests approval of time from December 22, 2015 through May 5, 2016 and documents 4.70 hours spent in connection with this appeal before the Board at \$475.00 an hour for Daniel M. Goodkin, Esq. on April 14, 2016, \$425.00 an hour for Mr. Goodkin on December 22, 2015 and January 15, 2016, and \$195.00 per hour for Paralegal Erika Bauer. The fee petition described the specific services provided for the amount claimed.

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 The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that she agreed with the requested fee for services rendered.

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 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."

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,598.50.

Issued: December 20, 2017
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