

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

In the Matter of K.M., Appellant)	
)	
and)	Docket No. 16-1223
)	Issued: August 22, 2018
U.S. POSTAL SERVICE, POST OFFICE, Prairie Home, MO, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,201.00.¹ 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

Pursuant to its regulation, the Board considers fee petitions 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.⁹ No response was received.¹⁰

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying merit issue was whether appellant met her burden of proof to establish total disability for the period September 7, 2013 to August 18, 2014. By decision dated November 21, 2016, the Board affirmed OWCP's March 8, 2016 decision, which denied appellant's claim for wage-loss compensation for the period September 7, 2013 to August 18, 2014.

On appeal counsel submitted an eight-page brief addressing the factual history of the case and arguing that the medical opinion of OWCP's district medical adviser (DMA) was not entitled to the weight of the medical evidence and that the DMA failed to consider the entirety of appellant's employment, and his opinion was not based on an accurate factual history. Alternatively, he maintained that there was a conflict in medical opinion between the DMA and appellant's attending physician.

OWCP's decision on appeal was dated March 8, 2016 and the appeal and supporting brief were filed with the Board on May 20, 2016. The fee petition requests approval of time from May 19 through November 22, 2016 and documents 3.80 hours spent in connection with this

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).

¹⁰ The Board notes that included with the counsel's fee petition was a signed statement from appellant indicating that she agreed with the requested fee.

appeal before the Board at \$425.00 per hour for counsel and \$195.00 per hour for paralegal Erika Bauer.¹¹

The Board has 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 \$1,201.00.¹²

Issued: August 22, 2018
Washington, DC

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

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

¹¹ The fee application petitions notes 2.00 hours of work by counsel, Mr. Goodkin, and 1.80 hours of work by Ms. Bauer.

¹² Colleen Duffy Kilo, Judge participated in the preparation of this order, but was no longer a member of the Board effective December 11, 2017.