

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

K.B., Appellant	)	
	)	
and	)	Docket No. 17-0969
	)	Issued: January 8, 2020
DEPARTMENT OF VETERANS AFFAIRS,	)	
VETERANS ADMINISTRATION MEDICAL	)	
CENTER, Sioux Falls, SD, Employer	)	
	)	

*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 \$4,220.00.<sup>1</sup> 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>

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<sup>1</sup> FECA (5 U.S.C. § 8127(b)) and its implementing regulation (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> *Id.* at § 8127.

<sup>3</sup> 20 C.F.R. § 501.9(e).

Pursuant to its regulations, the Board has 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>

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.<sup>10</sup>

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated March 8, 2017, the Office of Workers' Compensation Programs (OWCP) found that appellant had not met her burden of proof to establish work-related orthopedic and emotional conditions. On April 3, 2017 appellant, through counsel, appealed to the Board. Counsel submitted a 22-page brief which addressed the factual history of the case and presented relevant Board precedent. He argued that OWCP failed to consider all the evidence, and erred in their finding that appellant was only a cashier from May 2008 to May 2009. Counsel also argued that the evidence of record from an attending physician established compensable employment factors, which were alleged to have caused the claimed emotional condition. By order dated March 13, 2018, the Board set aside the March 8, 2017 decision and remanded the case to OWCP,

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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 FECA appeals.

<sup>9</sup> 20 C.F.R. § 501.9(e).

<sup>10</sup> The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that the requested fee of \$4,220.00 was reasonable and appropriate. Appellant expressed her understanding that she was responsible for payment of the fee.

finding that OWCP had not analyzed a medical report as ordered by the Board in its November 16, 2016 decision.

On March 28, 2018 counsel provided a fee petition requesting approval of fees totaling \$4,220.00. The fee petition requests approval of time from April 3, 2017 through March 16, 2018 and documents rates at \$300.00 per hour for John S. Evangelisti, Esq., \$225.00 per hour for his associates, and \$175.00 per hour for his paralegals.

The Board has carefully reviewed the fee petition and finds that 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 up to a year or both.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$4,220.00.

Issued: January 8, 2020  
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