

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

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In the Matter of R.W., Appellant)	
)	
and)	Docket No. 18-1714
)	Issued: May 9, 2023
TENNESSEE VALLEY AUTHORITY,)	
WIDOWS CREEK FOSSIL PLANT,)	
Stevenson, AL, Employer)	
_____)	

Appearances:
Gerald M. Siciliano, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$2,068.00.¹ 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 regulations, 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. No response was received.

The requested fee pertains to services performed before the Board in the above-referenced appeal. The issue before the Board was whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). By decision dated July 31, 2018, OWCP denied his request for reconsideration pursuant to 5 U.S.C. § 8128(a).

On appeal, counsel submitted a six-page brief, excluding attachments, in support of his contention that appellant had submitted new and relevant evidence not previously considered and that, consequently, OWCP erred in failing to reopen his case for further review of the merits under section 8128(a). He further asserted that a hearing loss questionnaire supported appellant's noise exposure.

By decision dated April 1, 2019, the Board set aside the July 31, 2018 decision. The Board found that OWCP improperly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). The Board remanded the case to OWCP to conduct a merit review of the claim, followed by an appropriate decision.

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 by the representative 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.

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.

⁷ The Board's evaluation of a representative'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 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.

On July 23, 2020 counsel provided a fee petition and statement of services performed before the Board, requesting approval of fees totaling \$2,068.00. The fee petition requests approval of fees for services from August 13, 2018 through April 5, 2019 and documents 20.68 hours spent in connection with this appeal before the Board at the rate of \$100.00 per hour. The fee petition described the specific services provided for the amount claimed.

The Board has carefully reviewed the fee petition and finds that it satisfies the requirements of section 501.9 (e) of the Board's *Rules of Procedure*.⁹

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 for up to one year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$2,068.00.

Issued: May 9, 2023
Washington, DC

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

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

⁹ *Supra* note 3.