

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

_____)	
In the Matter of L.B., Appellant)	
)	
and)	Docket No. 20-1361
)	Issued: March 14, 2024
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, San Bernardino, CA, 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:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

Counsel for appellant has filed a fee petition in the amount of \$2,558.50.¹ 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 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.

² *Id.* at § 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

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated January 7, 2020, the Office of Workers' Compensation Programs (OWCP) granted appellant a schedule award for 48 percent permanent impairment of the right lower extremity, 45 percent permanent impairment of the left lower extremity, 43 percent permanent impairment of the right upper extremity, and 16 percent permanent impairment of the left upper extremity and used a pay rate of \$486.60 to calculate the payment of the schedule award. By decision dated June 10, 2020, it denied appellant's request for reconsideration of the pay rate used to calculate payment of the schedule award.

On July 1, 2020, appellant, through counsel, appealed the January 7 and June 10, 2020 decisions to the Board. Counsel submitted a five-page brief in support of the appeal. By decision dated February 4, 2022, the Board set aside OWCP's January 7 and June 10, 2020 decisions and remanded the case to OWCP to determine appellant's proper pay rate in calculating her schedule award and to issue an appropriate decision.

On May 18, 2022, counsel filed a fee petition and a statement of service requesting approval of fees totaling \$2,558.50.

OWCP's decisions on appeal were dated January 7 and June 10, 2020 and the appeal was filed with the Board on July 1, 2020. The fee petition requests approval of services from June 24, 2020 through February 4, 2022 and documents 10.80 hours spent in connection with this appeal before the Board at \$490.00 per hour for 1.6 hours for Daniel M. Goodkin, Esq., \$195.00 per hour for 2.0 hours and no charge at 0.10 hour for paralegal Erika Bauer, and \$195.00 per hour for 6.5 hours for J. Spencer Adams. The fee petition described the specific services provided for the amount claimed.

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 Attached to the fee

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).

petition is a signed acknowledgement by appellant consenting to the fee in the amount of \$2,558.50 as reasonable and appropriate. The Board has reviewed the fee petition and finds that it meets 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.”¹⁰ 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 \$2,558.50.

Issued: March 14, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

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

Janice B. Askin, Judge
Employees’ Compensation Appeals Board

¹⁰ *Id.*