

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

**In the Matter of Y.M., claiming as widow of J.M.,
Appellant**

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION, San Diego, CA, Employer**

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**Docket No. 13-1766
Issued: April 28, 2016**

Appearances:

Steven E. Brown, Esq., for the appellant
Office of the 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
COLLEEN DUFFY KIKO, Judge

Counsel for appellant has filed a fee petition in the amount of \$2,848.50.¹ 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

By order dated September 12, 2014, the Board denied counsel's fee petition as it had failed to adequately delineate the services performed, to explain the purpose of the various office status meetings where no legal service was noted, and otherwise failed to explain in detail how the claimed fee was justified under the five factors listed above. Counsel was permitted 60 days to resubmit the fee petition.

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 issue was a claim for compensation by the widow of the employee claiming that employment factors were responsible for the employee's death. By decision dated June 17, 2013, OWCP denied appellant's claim finding that the weight of the evidence rested with the independent medical specialist who found the employee's death was due to complications of myocardial infarction from a coronary thrombosis. By decision dated January 14, 2014, the Board remanded the case for further clarification from the independent medical specialist.

On appeal counsel submitted a seven-page brief presenting the statutory and regulatory standards for death benefits cases and offered Board precedent in similar cases. He argued, in the alternative, that employment factors did contribute to the employee's death, that the independent medical specialist failed to properly rely on the statement of accepted facts in the case, and that the treating physician was not accorded the proper weight. Counsel contended that the evidence and argument submitted to OWCP had not only been new but also relevant. He cited Board precedent to support his argument on appeal.

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 found the requested fee to be reasonable and appropriate.

On October 28, 2014 counsel provided a supplemental fee petition addressing the deficiencies previously noted by the Board. He clarified the events listed in the itemized fee petition and the hourly charges for the individuals in the itemized statements. Counsel addressed the usefulness of his services noting that the case was complex and that he was successful in his argument as the Board had remanded the case to OWCP for further development. He also discussed his communication with appellant during the representation before the Board and addressed the customary local charges for similar services. Counsel discussed his communication with appellant during the representation before the Board and addressed the customary local charges for similar services. He specifically addressed the hourly rates charged by the staff of his law firm, noting that they had been found reasonable in other administrative tribunals.

OWCP's decision on appeal was dated June 17, 2013 and the appeal was filed with the Board on July 22, 2013. The fee petition requests approval of time from July 16 through July 17, 2013 and documents 6.9 hours spent in connection with this appeal before the Board at \$525.00 per hour for Steven E. Brown, Esquire, \$425.00 per hour for Daniel M. Goodkin, Esquire, and \$195.00 per hour for Paralegal Erika Bauer.

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."

Counsel clarified that the past due amount in the letter referenced fees due from appellant for work before OWCP. He explained that appellant had not paid fees in connection with the appeal before the Board.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$2,848.50.

Issued: April 28, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board