

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

In the Matter of B.W., Appellant	)	
	)	
and	)	Docket No. 16-0120
	)	Issued: September 13, 2018
DEPARTMENT OF ENERGY, BONNEVILLE	)	
POWER ADMINISTRATION, Portland, OR,	)	
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  
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$3,036.50.<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>

Under these regulations, the Board must consider the petition under the following general criteria:

- (1) The usefulness of the Representative's services;<sup>4</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> 5 U.S.C. § 8127.

<sup>3</sup> 20 C.F.R. § 501.9(e).

<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

- (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> Included with counsel's fee petition, however, was an August 18, 2017 signed statement from appellant, indicating that the requested fee of \$3,036.50 was reasonable and appropriate.

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying merit issue was whether the Office of Workers' Compensation Programs (OWCP) properly terminated appellant's wage-loss compensation. In an April 29, 2015 decision, terminated appellant's wage-loss compensation, effective May 3, 2015, pursuant to 20 C.F.R. § 10.500(a). On appeal counsel submitted a six-page brief containing supporting legal authority for the argument that OWCP improperly terminated appellant's wage-loss compensation effective May 3, 2015. In a July 22, 2016 decision, the Board affirmed OWCP's April 29, 2015 decision. On July 28, 2016 appellant, through counsel, filed a petition for reconsideration of the Board's July 22, 2016 decision and, in a May 24, 2017 order, the Board denied appellant's petition for reconsideration.

On August 29, 2017 counsel submitted a fee petition and a statement of service before the Board, requesting approval of fees totaling \$3,036.50, which addressed the general criteria found at 20 C.F.R. § 501.9(e). Counsel provided a detailed account of the specific legal tasks he and his associates performed and he specifically addressed the hourly rates charged. OWCP's decision on appeal was dated April 29, 2015 and the appeal was filed with the Board on October 26, 2015. The fee petition requests approval of services from August 25, 2015 through May 24, 2017 and documents a total of 9.05 hours spent in connection with this appeal before the Board, including

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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 the FECA appeals.

<sup>9</sup> 20 C.F.R. § 501.9(e).

2.00 hours at \$475.00 per hour and 2.40 hours at \$425.00 per hour for services by Daniel M. Goodkin Esq.; 0.45 hours at \$550.00 per hour for services by Steven E. Brown, Esq.; and 4.20 hours at \$195.00 per hour for services by Paralegal Erika Bauer. The fee petition described the specific services provided for the time charged.

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 \$3,036.50.<sup>10</sup>

Issued: September 13, 2018  
Washington, DC

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

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

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<sup>10</sup> Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017 and did not participate in the preparation of this order.