

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

In the Matter of J.C., Appellant)	
)	
and)	Docket No. 18-0747
)	Issued: January 7, 2020
DEPARTMENT OF THE AIR FORCE, 309th)	
MAINTENANCE SUPPORT SQUADRON,)	
HILL AIR FORCE BASE, UT, Employer)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER DENYING 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 \$530.50.¹ 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 Act² (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

Under the regulations, the Board must consider the 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

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. By decision dated June 8, 2017, OWCP denied appellant's claim for compensation for the period May 26 to July 18, 2016. On November 30, 2017 appellant, through counsel, appealed to the Board. By order dated August 17, 2018, the Board dismissed the appeal assigned Docket No. 18-0747 as it was a duplicate of Docket No. 18-0318 which proceeded for adjudication with the Board.

On August 30, 2018 counsel submitted a fee petition requesting approval of fees totaling \$530.50. The fees requested pertain to services provided from November 20, 2017 to August 20, 2018. The invoice specifies 1.0 hours spent by paralegal Jessica Duncan at \$195.00 per hour, and 0.7 hours spent by attorney Daniel M. Goodkin at \$475.00 and \$490.00 per hour.

The Board has reviewed the fee petition and finds that, in order to avoid duplication of fees charged or excessive costs to appellant, it must be denied. Counsel has requested fees for work in an appeal which was dismissed as a duplicate docket. Thus, the fees sought for legal work relating to the appeal from the June 8, 2017 merit decision and September 22, 2017 nonmerit decision of OWCP should be claimed in a fee petition for work performed with regard to Docket No. 18-0318.

The Board notes that under 20 C.F.R. § 501.9(e) "[n]o claim for a fee for legal or other services performed on appeal before the Board is valid unless approved by the Board." Under

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 FECA appeals.

⁹ 20 C.F.R. § 501.9(e).

¹⁰ The Board notes that included with the representative's fee petition was a signed statement dated August 29, 2018 indicating appellant's confirmation that the requested fees were reasonable and appropriate. Appellant expressed his understanding that he was responsible for payment of the fee.

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 one year, or both.

IT IS HEREBY ORDERED THAT the fee petition is denied.

Issued: January 7, 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