

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

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**M.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
St. Petersburg, FL, Employer**

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**Docket No. 18-1101  
Issued: March 30, 2022**

*Appearances:*

*C.B. Weiser, 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, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$658.22.<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 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;<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> No response was received.

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issues were: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation in the amount of \$120,114.57 for the period November 1, 2001 through March 4, 2017; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$950.00 every 28 days from appellant's continuing compensation.

On appeal, counsel submitted a three-page brief presenting the facts and Board precedent in similar cases. By decision dated January 17, 2019, the Board affirmed OWCP's November 13, 2017 decision, finding that: (1) appellant received an overpayment of compensation in the amount of \$120,114.57; (2) OWCP properly denied waiver of recovery of the overpayment; and (3) OWCP properly required recovery of the overpayment by deducting \$950.00 every 28 days from her continuing compensation payments.

On February 1, 2019 counsel provided a fee petition and statement of services performed before the Board, requesting approval of fees totaling \$658.22. The fee petition requests approval of services from December 27, 2017 through February 1, 2019 and documents 3.2 total hours spent in connection with this appeal before the Board at \$200.00 per hour. The fee petition described the specific services provided for the amount claimed.

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<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.

<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).

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*.<sup>10</sup>

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.”<sup>11</sup> 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 one year, or both.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$658.22.

Issued: March 30, 2022  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>10</sup> *Supra* note 3.

<sup>11</sup> *Id.*