

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

In the Matter of K.A., claiming as widow of S.A., Appellant)	
)	
and)	Docket No. 13-274
)	Issued: April 28, 2016
)	
DEPARTMENT OF DEFENSE, DEFENSE EDUCATION ACTIVITY, Arlington, VA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Daniel M. Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

ORDER GRANTING 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 \$2,334.00.¹ He filed the request under the Office of Workers' Compensation Programs' (OWCP) regulations, pursuant to 20 C.F.R. § 10.703 and noted that, as appellant was in agreement with the fees, the application was deemed approved. 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 There is no option for the fees to be "deemed approved" under the Board's regulations.

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).

Pursuant to its regulation, the Board considered the fee petition under the following criteria:

- (1) The usefulness of the Representative's services;⁴
- (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 18, 2014, the Board denied counsel's fee petition as it had failed to adequately delineate the services performed or explain the purpose of the office status meetings 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. No response was received.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant had met her burden of proof to establish survivor benefits. By decision dated September 25, 2013, OWCP denied appellant's claim finding that the medical evidence failed to adequately establish that employment factors contributed to the death of the employee. By decision dated April 10, 2013, the Board affirmed the denial of appellant's claim.

On appeal counsel had submitted a five-page brief addressing the factual history of the case and presented Board precedent addressing the burden of proof regarding death benefit claims. He argued that the medical evidence established the causal connection between the

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.

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 The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that she agreed with the requested fee for services rendered.

accepted conditions and the ultimate death of the employee. Counsel noted that the case had previously been remanded by the Board for further development and he argued that the further development was insufficient and should be once again remanded for OWCP to properly develop the claim.

On October 2, 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 somewhat complex and that proper legal research and argument was provided. He argued that, although the appeal was ultimately unsuccessful before the Board, the claim was being pursued again before OWCP based on newly-discovered evidence. Counsel also 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 September 25, 2012 and the appeal was filed with the Board on November 15, 2012. The fee petition requests approval of time from October 12, 2012 through May 29, 2013 and documents the fees as \$525.00 per hour for Steven E. Brown, Esquire, \$425.00 or \$395.00 per hour for Daniel M. Goodkin, Esquire, and \$195.00 or \$185.00 per hour for Paralegal Erika Bauer.

In this regard, however, the Board finds excessive billing while the appeal was pending before the Board. In many cases, counsel included multiple billings by various staff members for "conference with attorneys (or w/attorney and paralegal) re: case status" or "review file for current status." In each of these meetings, which appear on the average of every six weeks, generally two attorneys and a paralegal are in attendance and bill for their time collectively.

In his supplemental fee petition, counsel explained that each of the status meetings were "to confirm that the appeal was being processed and that no further action was required on our part (such as submission of additional documents required by [the Board] that may not have been received) as well as to discuss the contents of the appeal so that all staff would be aware and able to respond to questions from appellant or further inquiry from [the Board]." The Board finds that, notwithstanding this explanation of the status meetings, these are excessive and redundant billing charges. The billed amounts for the status conferences while the appeal was pending with the Board are disallowed. The Board will disallow one hour December 6, 2012 and March 22, 2013 as excessive and redundant:¹⁰

Daniel Goodkin	.30@ \$395.00	\$118.50
Daniel Goodkin	.30@ \$425.00	\$127.50
Steven Brown	.20@ \$525.00	\$105.00
Erika Bauer	.10@ \$185.00	\$ 18.50

¹⁰ While not directly pertaining to claims under FECA, the Board finds instructive the decision of the United States Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In any fee petition, counsel must use billing judgment and exclude redundant or unnecessary hours and to confirm that the fee requested is not excessive. Adequate documentation should be submitted to support the hours of work performed with specificity or a reasonably precise description of the work performed on behalf of the client.

Erika Bauer	.10@ \$195.00	<u>\$ 19.50</u>
Total:	1.0	\$ 389.00

The Board has carefully reviewed the fee petition and finds it, as modified, otherwise satisfies the requirements of section 501.9(e) of the Board’s implementing regulations.

Included with the documents submitted to the Board was a letter to appellant dated July 30, 2013, requesting payment “at this time.” 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.”

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,945.00.

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

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