

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

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C.G., widow of D.G., Appellant )

and )

U.S. AGENCY FOR INTERNATIONAL )  
DEVELOPMENT, Washington, DC, Employer )

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**Docket No. 13-1113  
Issued: March 6, 2018**

*Appearances:*

J. Michael Hannon, 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  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

Counsel for appellant has filed a request for approval of attorney's fee in the amount of \$8,480.00.<sup>1</sup> The Board notes that all petitions for approval of fees for representative services are considered under the Board's statutory authority found at section 8127 of the Federal Employees' Compensation Act,<sup>2</sup> *Rules of Procedure* and the applicable statute and regulation are found at 20 C.F.R. § 501.9(e).<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> *Id.* at § 8127.

<sup>3</sup> 20 C.F.R. § 501.9(e).

Pursuant to its regulations, the Board considered the petition under the following general criteria:

- (1) The usefulness of the Representative's services;<sup>4</sup>
- (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>

Counsel had previously submitted a request for approval of attorney's fees in the amount of ten thousand seven hundred and thirty dollars (\$10,730.00). The Board issued an order dated September 7, 2016 denying the fee petition.<sup>10</sup> The Board indicated that counsel had not properly explained how the claimed fee was justified under the five factors listed above. As the Board indicated, a new fee petition could be submitted within 60 days.

On November 2, 2016, counsel submitted a new fee petition requesting approval of eight thousand four hundred eighty dollars (\$8,480.00). A signed statement dated November 1, 2016 from appellant indicated that she agreed with the requested fee.

Counsel submitted a fee petition discussing the background of the case, and provided a list of services rendered. The history of the case indicates that appellant claimed the death in Kazakhstan of the employee, her spouse, was employment-related. The Director of OWCP submitted a motion to reverse dated June 10, 2013 with respect to an October 10, 2012 OWCP

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<sup>4</sup> The Board's consideration of "usefulness" includes, but is not limited to, the frequency and quality of communication by the attorney with the client, the factual evidence and legal argument offered by the attorney and written pleadings filed in the case. The Board will also consider the usefulness of an attorney'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 attorney must establish the complex or unusual nature of the appeal.

<sup>6</sup> The Board's consideration of the "capacity" in which an attorney appears includes, but is not limited to, whether the attorney obtained a written retainer and fee agreement.

<sup>7</sup> The Board's evaluation of an attorney's 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 counsel 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 attorneys often have clients in several states and that local custom must be balanced against national practice in FECA appeals.

<sup>9</sup> Counsel included an undated signed statement from appellant indicating she agreed with the requested fee.

<sup>10</sup> Docket No. 13-1113 (issued September 7, 2016).

decision, and by order dated July 25, 2013, the Board granted the motion to reverse. The total time claimed by counsel was 44.50 hours, with hourly fees of \$300.00 for counsel, \$200.00 per hour for an associate.

The Board has considered the renewed fee petition and finds that it should be granted in the amount of six thousand two hundred seventy dollars (\$6,270.00).

In this regard the Board finds that a portion of the billing charges do not provide a clear explanation of the relevance to the ECAB appeal. The Board will accordingly disallow the following requested fees:

JMH: January 28, 2013, 0.20 hours, "OC with SH re: DOL petition" \$60.00; May 6, 2013, 2.00 hours, "Work on communication with Rajiv Shah and Francisco Zamora re: Agency recognition of Gredler death in line of duty" \$600.00; May 7, 2013, 2.00 hours, "Further work on publicizing claim; T/C insider; T/C Catherine Carter re: OWCP reversal" \$600.00; May 8, 2013, 0.50 hours, "Communication with Caroline and Congresswoman Brooks re: pressure on OWCP/DOL," \$150.00; June 13, 2013, 2.20 hours, "Work on fee petition" \$660.00.

JSH: February 15, 2013, 0.60 hours, "Rev'd procedure; drafted let to UK coroner; downloaded and watched Clinton award/speech re: Dale's sacrifice" \$120.00; June 12, 2013, "Rev'd JMH email re: update to USAID officials on outcome" \$20.00.

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.

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 \$6,270.00.<sup>11</sup>

Issued: March 6, 2018  
Washington, DC

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

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

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<sup>11</sup> Michael E. Groom, Alternate Judge, participated in the preparation of the decision, but was no longer a member of the Board effective December 27, 2014 and did not participate in the preparation of this order.