

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

_____)	
In the matter of D.B., Appellant)	
)	
and)	Docket No. 13-1355
)	Issued: March 1, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Fort Collins, CO, Employer)	
_____)	

Appearances:
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING FEE PETITION

Before:
PATRICIA HOWARD FITZGERALD, Alternate Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$7,928.75.¹ The Board notes that all petitions for approval of fees for a 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

Pursuant to its regulations, the Board must consider the petition under the following general 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 5 U.S.C. § 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.

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*.¹⁰ The Board finds, however, that an attorney fee in the amount of \$7,928.75 is not supported by the documentation attached in support of the petition. The petition seeks \$1,005.00 in connection with work performed for the period from December 18 to December 31, 2012, which predates the March 4, 2013 decision of the Office of Workers' Compensation Programs (OWCP) which is the basis for the appeal in this docket file. An additional \$45.00 for work on January 14, 2013 also predates OWCP's decision on appeal. As these fees in the amount of \$1,050.00 are not related to fees for legal services for work before the Board, they are denied. Fees in the amount of \$6,833.75 are supported by the documentation attached to the petition and shall be awarded.

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."¹¹ 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.

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 20 C.F.R. § 501.9(e).

¹⁰ *Supra* note 3.

¹¹ *Id.*

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$6,833.75.¹²

Issued: March 1, 2021
Washington, DC

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

¹² Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017. James A. Haynes, Alternate Judge, participated in the original decision, but was no longer a member of the Board effective November 16, 2015.