

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

In the Matter of J.E., Appellant)	
)	
and)	Docket Nos. 11-1657 & 14-
)	0586
U.S. POSTAL SERVICE, PHILADELPHIA)	Issued: December 20, 2017
BULK MAIL CENTER, Philadelphia, PA,)	
Employer)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

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 \$1,779.00.¹ 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 Act,² and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

Pursuant to its regulation, the Board considered the fee 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 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).

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. No response was received.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeals. Counsel requests a fee for work performed before the Board in appeals assigned Docket No. 11-1657 and Docket No. 14-0586.

Regarding Docket No. 11-1657, the underlying issue was whether appellant sustained an injury on August 10, 2010 in the performance of duty. OWCP, in a merit decision dated April 13, 2011, denied his traumatic injury claim as he did not establish that the alleged incident occurred at the time, place, and in the manner alleged. By decision dated March 20, 2012, the Board set aside the April 13, 2011 decision after finding that appellant had established the occurrence of the August 10, 2010 work incident. It remanded the case for further development of the medical evidence.

In the appeal assigned Docket No. 11-1657, counsel submitted a six-page brief citing Board case law and OWCP procedures regarding the issue of whether appellant had submitted the evidence necessary to factually and medically establish his traumatic injury claim. He contended that he had established that the incident occurred as alleged and that the medical evidence was sufficient to either establish his claim or warrant further development.

Regarding Docket No. 14-0586, the underlying issues were whether OWCP properly terminated appellant's authorization for medical benefits effective March 19, 2019 and whether

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 he agreed with the requested fee for services rendered.

appellant established intermittent periods of disability from September 24, 2010 to April 6, 2012 due to his accepted employment injury.

By decision dated October 21, 2013, an OWCP hearing representative affirmed a March 21, 2013 decision denying appellant's claim for disability from September 25, 2010 to April 6, 2012 due to his August 10, 2010 work injury. In a November 4, 2013 decision, an OWCP hearing representative affirmed a March 20, 2013 decision finding that he had no residuals of his accepted employment injury effective March 19, 2013. She determined that the opinion of an impartial medical examiner constituted the weight of the evidence. In a decision dated September 2, 2014, the Board set aside the October 21, 2013 decision and reversed the November 4, 2013 decision. It found an unresolved conflict regarding whether appellant sustained additional conditions due to his accepted August 10, 2010 work injury.

In the appeal assigned Docket No. 14-0586, counsel submitted a nine-page brief citing Board case law and OWCP procedures and contending that OWCP failed to establish that appellant had no residuals of his work injury as of September 25, 2010. He asserted that the report of the impartial medical examiner was of insufficient probative value to constitute the weight of the evidence. Counsel also contended that the impartial medical examiner was improperly selected.

Counsel, on March 27, 2017, submitted a fee petition describing the services performed on behalf of appellant before the Board in Docket No. 11-1657 and Docket No. 14-0586, the time spent on the services, and the exact amount claimed. He also submitted a statement signed by appellant on March 3, 2017 finding the fee acceptable.

OWCP's decisions on appeal were dated April 13, 2011, October 21, and November 4, 2013 and the appeals were filed with the Board on July 8, 2011 and January 23, 2014. The fee petition request approval of time for work performed on June 29, 2011 and January 10, 2014 and documents 6.42 hours spent in connection with both appeals before the Board at \$350.00 per hour for Thomas Uliase, Esquire, \$150.00 per hour by Janet Kennedy, paralegal.

The Board has carefully reviewed the fee petition and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulation. The Board concludes that the fee requested is reasonable.

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 19 U.S.C. § 292, collecting a fee without the approval of the Board may constitute a misdemeanor, subject to fine or imprisonment up to a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,779.00.

Issued: December 20, 2017
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