

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

In the Matter of H.J., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Atwater, CA, Employer**

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**Docket No. 15-0705
Issued: November 1, 2016**

Appearances:
Daniel M. Goodkin, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,516.00.¹ 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 (FECA) 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 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 *Id.* at § 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.¹⁰

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated September 26, 2014, the Office of Workers' Compensation Programs (OWCP) found that appellant did not meet his burden of proof to establish work-related orthopedic and emotional conditions. By decision dated November 2, 2015, the Board affirmed the September 26, 2014 decision of OWCP. With respect to the claimed orthopedic condition, the Board found that appellant engaged in repetitive standing, lifting, crouching, bending, and stooping at work, but that the medical evidence did not show that he sustained an orthopedic condition due to these work factors. With respect to the claimed emotional condition, the Board found that appellant did not establish any of the claimed work factors which he believed caused him to develop an emotional condition.

On appeal counsel submitted a four-page brief which addresses the factual history of the case and presents Board precedent regarding the establishment of work-related orthopedic and emotional conditions. He argued that the medical evidence of record is sufficiently well rationalized to establish an orthopedic condition due to appellant's engaging in repetitive standing, lifting, crouching, bending, and stooping at work. Counsel also argued, with respect to the claimed emotional condition, that the evidence of record establishes compensable work factors which caused this condition. He requested that appellant's claim be accepted for the claimed orthopedic and emotional conditions.

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 The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that the requested fee of \$1,516.00 was reasonable and appropriate. Appellant expressed his understanding that he was responsible for payment of the fee.

On December 8, 2015 counsel provided a fee petition and a statement of service requesting approval of fees totaling \$1,516.00.

OWCP's decision on appeal was dated September 26, 2014 and the appeal was filed with the Board on February 3, 2015. The fee petition requests approval of time from February 2 through November 9, 2015 and documents 4.0 hours spent in connection with this appeal before the Board at \$425.00 per hour for 3.2 hours for Daniel M. Goodkin, Esq., and \$195.00 per hour for 0.8 hours for Paralegal Jessica Pope. The fee petition described the specific services provided for the amount claimed.

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 regulations. 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 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 a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,516.00.

Issued: November 1, 2016
Washington, DC

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

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

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