

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

_____)	
In the Matter of L.B., Appellant)	
)	
and)	Docket No. 17-0597
)	Issued: April 19, 2018
DEPARTMENT OF AGRICULTURE, FOREST)	
SERVICE, Albuquerque, NM, Employer)	
_____)	

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

Counsel for appellant has filed a fee petition in the amount of \$1,624.00.¹ 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 must consider 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.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant met her burden of proof to establish that her arthritic condition was a consequence of her accepted April 21, 2007 employment injury. By decision dated September 1, 2017, the Board found the case was not in posture for a decision as the Board found the opinion of the impartial medical examiner was based on an inaccurate statement of accepted facts. The Board therefore remanded the case for preparation of a proper statement of accepted facts and a new referral to an impartial medical examiner, to be followed by a *de novo* decision. On October 30, 2017 counsel submitted a fee petition and statement of services requesting approval of fees totaling \$1,624.00.

OWCP's decisions on appeal were dated July 28 and October 11, 2016 and the appeal was filed with the Board on January 23, 2017. The Board issued its decision on September 1, 2017. The fee petition requests approval of services from November 10, 2016 to September 6, 2017 and documents 5.60 hours spent in connection with the appeal before the Board at \$475.00 an hour for 1.90 hours for Daniel M. Goodkin, Esq. and \$195.00 per hour for 3.70 hours for Paralegal Erika Bauer. 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.

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). 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.

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 that the fee petition is granted in the amount of \$1,624.00.¹⁰

Issued: April 19, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees’ Compensation Appeals Board

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

¹⁰ Colleen D. Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017 and did not participate in the preparation of this order.