

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

In the Matter of A.H, Appellant)	
)	
and)	Docket No. 13-266 & 17-0035
)	Issued: August 1, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Columbus, OH, Employer)	
)	

Appearances:
Stanley R. Stein, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On July 17, 2018 counsel filed a fee petition and statement of services on requesting approval of fees totaling \$10,050.00. However, on January 16, 2020 the Board denied that fee petition, finding that a similar petition in the same amount was approved by OWCP and that it was unable to ascertain which fees were charged for services before OWCP and which were for services before the Board. The Board granted 60 days to resubmit the fee petition.¹

On February 4, 2020 counsel submitted a revised fee petition and statement of services requesting approval of fees totaling \$2,250.00.² The Board notes that all petitions for approval of fees for representative's services are considered under the Board's statutory authority found at

¹ *Order Denying Fee Petition*, Docket Nos 13-266 & 17-0035 (issued January 16, 2020).

² 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.

section 8127 of the Federal Employees' Compensation Act,³ (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).⁴

Pursuant to its regulation, the Board considered the fee petition under the following criteria:

“(1) The usefulness of the Representative’s services;⁵

“(2) The nature and complexity of the appeal;⁶

“(3) The capacity in which the Representative has appeared;⁷

“(4) The actual time spent in connection with the Board appeal;⁸ and

“(5) Customary local charges for similar services.”⁹”

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.¹⁰

The requested fees pertain to services performed before the Board in the two above-referenced appeals. The underlying issues on appeal were whether appellant met his burden of proof to establish a recurrence of total disability beginning on February 24, 2010, and a recurrence of total disability for the period August 22, 2010 to February 24, 2014, causally related to his February 23, 2009 employment injury.

³ 5 U.S.C. § 8127.

⁴ 20 C.F.R. § 501.9(e).

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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).

⁹ 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.

¹⁰ 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 he agreed with the requested fee for services rendered.

The revised petition includes fees for work on two appeals before the Board. In Docket No. 13-266, OWCP's decision was dated May 30, 2012, the appeal was filed with the Board on November 16, 2012, and the Board issued its decision on October 24, 2013. In Docket No. 17-0035, OWCP's decision was dated April 21, 2016, the appeal was filed with the Board on October 14, 2016 and the Board issued its decision on June 22, 2018.

The fee petition requests approval of services for a total of nine hours at \$250.00 per hour for Stanley R. Stein, *Esq.*, and documents five hours spent in connection with the Board appeal in Docket No. 13-266, and four hours spent in connection with the Board appeal in Docket No. 17-0035. The fee petition describes 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 for up to a year or both."

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$2,250.00.

Issued: August 1, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board