

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

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**In the Matter of D.L., Appellant** )

**and** )

**U.S. POSTAL SERVICE, THOUSAND OAKS** )  
**POST OFFICE, San Antonio, TX, Employer** )  
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**Docket No. 19-1255**  
**Issued: July 25, 2023**

*Appearances:*  
*Andrew Douglas, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**ORDER GRANTING FEE PETITION**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$367.50.<sup>1</sup> 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<sup>2</sup> (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).<sup>3</sup>

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

(1) The usefulness of the Representative's services;<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8127.

<sup>3</sup> 20 C.F.R. § 501.9(e).

<sup>4</sup> 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;<sup>5</sup>
- (3) The capacity in which the Representative has appeared;<sup>6</sup>
- (4) The actual time spent in connection with the Board appeal;<sup>7</sup> and
- (5) Customary local charges for similar services.<sup>8</sup>

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.<sup>9</sup> On June 12, 2019 the Clerk of the Appellate Boards received a signed statement dated May 3, 2019, in which appellant indicated that the requested fee of \$367.50 was reasonable and appropriate. Appellant expressed his understanding that he was responsible for payment of the fee.

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue on appeal is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation, effective May 8, 2017, pursuant to 20 C.F.R. § 10.500(a), based on appellant's failure to accept a temporary limited-duty assignment. In a January 8, 2018 decision, an OWCP hearing representative affirmed OWCP's May 8, 2017 termination of wage-loss compensation benefits. By decision dated April 5, 2019, OWCP denied modification of its January 8, 2018 decision.

On appeal counsel submitted a 10-page brief addressing the issue on appeal and citing to Board precedent in similar cases. He argued that the modified city carrier position offered to appellant was not suitable, even if the employing establishment used the work restrictions provided by the second opinion examiner.

On May 6, 2019 counsel provided a fee petition and statement of services requesting approval of fees totaling \$367.50.

The fee petition requests approval of services for \$367.50 at \$250.00 per hour for Andrew Douglas, Esq., and documents 1.47 hours spent in connection with the Board appeal in Docket No. 19-1255. The fee petition describes the specific services provided for the amount claimed.

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> 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 Board has 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 \$367.50.

Issued: July 25, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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