

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

_____)	
In the Matter of S.S., Appellant)	
)	
and)	Docket No. 19-1516
)	Issued: July 27, 2023
U.S. POSTAL SERVICE, POST OFFICE, Stanhope, NJ, Employer)	
_____)	

Appearances:
James D. Muirhead, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$990.00.¹ 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

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).

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

- (1) The usefulness of the Representative's services;⁴
- (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.

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated July 18, 2018, OWCP finalized a proposed termination of appellant's wage-loss compensation and medical benefits, finding that the residuals of her accepted work-related medical condition(s) and disability from work as a result of her December 27, 2012 traumatic injury had ceased. By decision dated January 30, 2019, a representative of OWCP's Branch of Hearings and Review affirmed the July 18, 2018 decision.

On July 8, 2019 counsel filed an appeal with the Board from OWCP's January 30, 2019 decision. By decision dated May 14, 2021, the Board found that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits. On October 21, 2021 the Board issued a corrected decision finding that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for the accepted conditions of cervical sprain, thoracic sprain, lumbar sprain, and cervical radiculopathy, while further finding that OWCP

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.

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.

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).

did not meet its burden of proof to terminate wage-loss compensation and medical benefits for the accepted condition of post-concussion syndrome.

On November 29, 2021 counsel provided a fee petition and a statement of services requesting approval of fees totaling \$990.00 from July 1, 2020 through October 28, 2021. The fee petition described the specific services provided for the amount claimed.

OWCP's decision on appeal was dated January 30, 2019 and the appeal was filed with the Board on July 8, 2019. The fee petition requests approval of time from July 1, 2020 through October 28, 2021 and documents 2.2 hours spent in connection with this appeal before the Board at \$450.00 per hour. The fee petition described the specific services provided for the amount claimed.

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.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$990.00.

Issued: July 27, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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