

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

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<b>In the Matter of S.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1658</b>
	)	<b>Issued: March 5, 2024</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Sicklerville, NJ, Employer</b>	)	
_____	)	

*Appearances:*  
Thomas R. Uliase, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,285.50.<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 regulations, the Board considers fee petitions under the following general 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> No response has been received.

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issues were whether appellant met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to her accepted November 22, 2016 employment injury; whether OWCP abused its discretion by denying authorization for left shoulder surgery; whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 6, 2018, as she no longer had residuals or disability causally related to the accepted November 22, 2016 employment injury; and whether appellant had met her burden of proof to establish continuing employment-related residuals or disability after June 6, 2018, causally related to the accepted November 22, 2016 employment injury. By decision dated February 13, 2019, an Office of Workers' Compensation Programs' (OWCP) hearing representative affirmed the decision dated June 6, 2018, terminating appellant's wage-loss compensation and medical benefits. By decision dated July 16, 2019, OWCP denied modification of the September 11, 2018 decision that denied authorization for left shoulder arthroscopic surgery and expansion of the acceptance of appellant's claim to include additional conditions. Appellant, through counsel, appealed to the Board on August 1, 2019. By decision dated November 12, 2020, the Board found that the case was not in posture for a decision because of a conflict in medical opinion as to whether the acceptance of appellant's claim should be expanded to include additional conditions. The Board indicated that this issue must be resolved before determining whether OWCP abused its discretion by denying authorization for left shoulder surgery. The Board further found that the termination of appellant's wage-loss and medical

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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 was obtained.

<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 counsel's fee petition was a signed statement from appellant indicating that she found the requested fee to be reasonable and appropriate.

benefits must be reversed as it was premature. Thus, the Board remanded the case and ordered such development as deemed necessary and the issuance of a *de novo* decision.

On appeal, counsel submitted an eight-page brief arguing that the evidence was sufficient to establish that the claim should be expanded and the medical necessity of left shoulder surgery. He asserted that the second opinion report of Dr. Stanley Askin, a Board-certified orthopedic surgeon, was insufficient to deny expansion of appellant's claim and deny authorization of surgery. Counsel also asserted that OWCP did not meet its burden of proof to terminate wage-loss and compensation benefits. In the alternative, he argued that there was a conflict in medical evidence between Dr. Askin and Dr. Laura E. Ross, appellant's treating Board-certified orthopedist, as to the issues of authorization of left shoulder surgery and expansion of the acceptance of appellant's claim. In his brief, counsel identified various medical reports he believed satisfied appellant's burden of proof in establishing the medical necessity for arthroscopic surgery and expansion of her claim.

On February 14, 2022 counsel provided a fee petition and a statement of service.

OWCP's decisions on appeal were dated February 13 and July 16, 2019. The Board issued its decision on November 12, 2020. The fee petition requests approval of time from July 26 through August 1, 2019, and documents 3.16 hours spent in connection with this appeal before the Board at \$300.00 per hour for Russell T. Uliase, Esquire, and 2.25 hours at \$150.00 per hour for Alisha M. Flynn.<sup>10</sup> The fee petition described the specific services provided for the amount claimed.

The Board has reviewed the fee petition, and finds 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.

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<sup>10</sup> In the cover letter to the fee petition counsel requested attorney fees of \$1,779.00. However, the fee petition documented 5.41 hours and a fee of \$1,285.50. Further, in a fee statement from appellant dated December 21, 2022 she found the requested fee of \$1,285.50 to be reasonable and appropriate.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$1,285.50.

Issued: March 5, 2024  
Washington, DC

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

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