

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

J.S., Appellant)
and) Docket Nos. 08-2072 and 09-
U.S. POSTAL SERVICE, POST OFFICE,) 650
Denver, CO, Employer) Issued: October 17, 2014
)

Appearances:

John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING ATTORNEY'S FEE

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

Counsel for appellant has filed a request for approval of attorney's fee in the amount of thirteen thousand, twenty-one dollars and seventy-five cents (\$13,021.75). By order dated May 14, 2014, the Board denied counsel's request and allowed an additional 60 days for the submission of additional material information to review the request under the Board's regulations at 20 C.F.R. § 501.9.¹

The Board found in its April 20, 2009 decision that appellant had identified a compensable factor of employment with respect to an incident between the postmaster and appellant on July 5, 2006, but affirmed the denial of the other allegations. The March 14 and 24, 2008 decisions of the Office of Workers' Compensation Programs (OWCP) were set aside and remanded in part as to the one issue of substantiated harassment.

On appeal appellant's counsel came before the Board for oral argument and submitted a 14-page brief in support of his argument. He provided the Board a detailed factual presentation as well as citations to many Board decisions regarding the effect of Equal Employment Opportunity Commission findings on OWCP cases. Counsel cited to *Robert C. Treadway*, Docket No. 00-2182 (issued February 19, 2002); *Jimmy L. Day*, Docket No. 95-2410 (issued August 26, 1997) and *Michael A. Deas*, Docket No. 00-1090 (issued November 14, 2001) as

¹ See 5 U.S.C. § 8127(b); 20 C.F.R. § 501.9.

supportive of his argument that a finding of harassment by EEOC would be relevant to a claim before OWCP.

On June 24, 2014, counsel responded to the Board's May 14, 2014 order providing additional information for consideration of the fee request pursuant to 20 C.F.R. § 501.9(e). He noted that appellant did not contest the amount of the fee. Counsel addressed the usefulness of the representative services by submitting legal argument in the claim with citation to Board precedent that was found relevant to the issue on appeal. He also addressed the time submitted in the fee petition on the case, in communication with appellant and addressed the customary local charges for similar services. Counsel specifically addressed the hourly rates charged by the staff of his law firm in this appeal.

The decisions on appeal to the Board were dated March 14 and 24, 2008. The fees charged for July 28, 2007 are disallowed as they are for periods prior to OWCP decisions from which appellant has appealed to the Board. Therefore, the amount of \$200.00 of the requested attorney fees is disallowed.

The Board notes that it is difficult to ascertain the services for which fees are being charged when the document presented for approval includes both services before OWCP and the Board. Crossing out certain lines with magic marker and handwriting different amounts on the statement will only delay the processing of the fee request. It is requested that only the fees charged for work before the Board be included in the request to be approved by the Board.

The Board has reviewed the fee petition and additional information submitted by counsel and finds, with the above-noted exceptions, that it satisfies the requirements of section 501.9(e) of the Board's implementing federal regulations.

The Board has reviewed the fee petition and additional information submitted by counsel and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing federal regulations.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount twelve thousand, eight hundred twenty-one dollars and seventy-five cents (\$12,821.75)

Issued: October 17, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board