

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

G.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Denver, CO, Employer**

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**Docket No. 10-1784
Issued: October 10, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

Counsel for appellant has filed a request for approval of attorney's fee in the amount of fourteen thousand, one hundred, seventy-one dollars and twenty-five cents (\$14,171.25). By order dated May 2, 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's September 30, 2011 decision found that the Office of Workers' Compensation Programs (OWCP) had failed to meet its burden of proof to rescind acceptance of appellant's claim for total disability. The January 14, 2010 OWCP decision was reversed. The Board found that the underlying wage-earning capacity was issued in error, as it was based on actual earnings from part-time employment; yet appellant was a full-time employee when injured. The Board further found there had been no conflict in medical evidence when OWCP referred appellant to an impartial medical specialist.

On appeal, appellant's counsel requested oral argument, but later canceled that request and submitted a 29-page brief in lieu of oral argument. He raised several issues in his appeal of OWCP's decision and cited to decisions of the Board to support his various arguments on appeal. Although the Board did not find each of the arguments persuasive, it did find counsel's arguments concerning the weight of the impartial medical specialist report and the use of a part-

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

time position in establishing a wage-earning capacity decision to be useful in rendering its decision. Counsel cited to *Nancy Darmetko*, Docket No. 97-2539 (issued January 5, 2000); *Naysru Ly*, Docket No. 98-957 (issued April 18, 2000) and *Ollie Hoque*, Docket No. 98-1779 (issued June 26, 2000) as supportive of his argument on wage-earning capacity decisions and *A.R.*, Docket No. 10-388 (issued September 17, 2010) in support of his argument on the weight of an impartial medical specialist.

On June 3, 2014 counsel responded to the Board's May 2, 2014 order providing additional information for consideration of the fee request pursuant to 20 C.F.R. § 501.9(e). He provided a copy of a document whereby appellant agreed to the hourly rates charged by counsel, and noted that the original fee agreement had been returned to him when the file was closed. Appellant is now deceased. 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 noted that this was an extremely complicated case spanning over a decade. Counsel was successful in his argument, as the Board reversed OWCP's decision due to an error in the original wage-earning capacity decision. 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 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 that the fee petition is granted in the amount of fourteen thousand, one hundred and seventy-one dollars and twenty-five cents (\$14,171.25).

Issued: October 10, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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