

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

_____)
B.S, Appellant)
)
and) Docket Nos. 10-2343 &
) 10-2390
) Issued: May 6, 2014
OFFICE OF PERSONNEL MANAGEMENT,)
FEDERAL INVESTIGATIONS DIVISION,)
Denver, CO, Employer)
_____)

Appearances: Oral Argument February 24, 2011
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

ORDER DENYING 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 five thousand, one hundred and twenty dollars (\$5,120.00). He filed the request under the Office of Workers’ Compensation Programs’ *Rules of Procedure*, pursuant to 20 C.F.R. § 10.703 and noted that, as appellant was in agreement with the fees, the application was “deemed approved.”

The Board notes that all petitions for approval of fees for representative services are considered under the Board’s *Rules of Procedure* and the applicable statute and regulation are found at 20 C.F.R. § 501.9.¹ There is no option for the fees to be “deemed approved” under the Board’s regulations.

Under these regulations, the Board must consider the petition under the following general criteria:

- (1) The usefulness of the Representative’s services;²

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

² The Board’s consideration of “usefulness” includes, but is not limited to, the frequency and quality of communication by the attorney with the client, the factual evidence and legal argument offered by the attorney and written pleadings filed in the case. The Board will also consider the usefulness of an attorney’s work as it aided the Board in its consideration and decision of the issue appealed.

- (2) The nature and complexity of the appeal;³
- (3) The capacity in which the Representative has appeared;⁴
- (4) The actual time spent in connection with the Board appeal;⁵ and
- (5) Customary local charges for similar services.⁶

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.⁷ No response was received.

The Board, having considered the fee petition and supporting documentation, denies the fee petition. The Board finds that the petition provides insufficient information to allow approval of any portion of the amount claimed. The Board notes the following defects:⁸

- (1) The fee petition does not adequately delineate the services performed relative to the particular appeal(s) before the Board. Persons identified in the itemized statement provided to the Board were not identified by name. Discrete, listed services billed separately were not adequately described.
- (2) The fee petition fails to explain in detail how the claimed fee is justified under the five factors listed in this order.

³ 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 attorney must establish the complex or unusual nature of the appeal.

⁴ The Board's consideration of the "capacity" in which an attorney appears includes, but is not limited to, whether the attorney obtained a written retainer and fee agreement.

⁵ The Board's evaluation of an attorney's 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 counsel 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).

⁶ The Board's consideration of customary, local fees recognizes that attorneys often have clients in several states and that local custom must be balanced against national practice in the Federal Employees' Compensation Act appeals.

⁷ 20 C.F.R. § 501.9(e).

⁸ This list is intended to assist counsel but does not limit the Board's discretion to evaluate any future fee petition on its own merits.

IT IS HEREBY ORDERED THAT the fee petition is denied and may be resubmitted to the Board within 60 days of the date of this order.

Issued: May 6, 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