

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

M.L., Appellant)	
)	
and)	Docket No. 11-1669
)	Issued: February 20, 2015
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, Employer)	
)	

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

Case Submitted on the Record

ORDER GRANTING FEE PETITION

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

Counsel for appellant has filed a request for approval of attorney's fee in the amount of five thousand, six hundred and fifteen dollars (\$5,615.00).¹ By order dated August 14, 2014, the Board denied counsel's request and allowed an additional 60 days for the submission of supplemental material information to review the request under the Board's regulations at 20 C.F.R. § 501.9.

The requested fees pertain to services performed before the Board in the above-referenced appeal. In its May 2, 2011 decision, an Office of Workers' Compensation Programs' (OWCP) hearing representative found the medical evidence insufficient to establish a recurrence of total disability. The Board, in its June 6, 2012 decision, found that appellant's light-duty assignment had been reduced under the National Reassessment Process (NRP). The Board remanded the case to OWCP to properly follow the guidelines in FECA Bulletin No. 09-05, issued August 18, 2009, which had been established specifically where light-duty positions were withdrawn pursuant to NRP. The May 2, 2011 OWCP decision was set aside and remanded in accordance with FECA Bulletin No. 09-05.

¹ The Federal Employees' Compensation Act (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.

The documents on appeal include a 10-page brief addressing the issue on appeal. Counsel argued that appellant had established a recurrence of total disability upon the withdrawal of appellant's light-duty position and cited to Board precedent finding that a withdrawal of a light-duty position, where no wage-earning capacity decision had been issued, established a recurrence. *T.B.*, Docket No. 09-2246 (issued July 19, 2010). Further, counsel cited to the FECA Procedure Manual and FECA Bulletin No. 09-05 in support of his position. As noted, the Board found that OWCP had failed to properly follow the guidelines in FECA Bulletin No. 09-05.

On September 18, 2014 counsel, in response to the Board's August 14, 2014 order, provided additional information for consideration of the fee petition pursuant to 20 C.F.R. § 501.9(e). He noted that appellant did not contest the amount of the fee and submitted a document signed by appellant agreeing to the fees charged. Counsel also noted that fees for work performed by OWCP are approved on a consistent basis.² He 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. Counsel noted that he was successful in his argument, as the Board remanded the case to OWCP. He also addressed the time submitted in the fee petition, 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.³

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.

² 20 C.F.R. 10.703(b) and the FECA Procedure Manual, Part 2 -- Claims, *Representatives' Services*, Chapter 2.1200.6 (June 2012) pertain to uncontested fees for work performed before OWCP. The procedures implemented by OWCP with regard to the consideration of fees are separate from the Board's review of such applications under 20 C.F.R. § 501.9(e). OWCP and the Board are two separate and distinct bodies and separate application to the Board is required for approval of a fee for legal or other services performed in connection with an appeal. *Evelyn R. Adams*, 10 ECAB 585 (1959).

³ 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." The Board notes that itemized statements submitted by counsel reflect that fees have been received prior to approval by the Board, which is contrary to the regulations.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of five thousand, six hundred and fifteen dollars (\$5,615.00).⁴

Issued: February 20, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

⁴ Richard J. Daschbach, Chief Judge, who participated in the preparation of the opinion, was no longer a member of the Board after May 16, 2014. Michael E. Groom, Alternate Judge, who participated in the original order, was no longer a member of the Board effective December 27, 2014.