

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

In the Matter of J.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE
Norwich, NY, Employer**

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**Docket No. 11-1772
Issued: April 28, 2016**

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING FEE PETITION

Before:

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

Counsel for appellant filed a fee petition in the amount of \$8,520.00.¹ 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,² (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

Pursuant to its regulation, the Board considered the fee petition under the following criteria:

- (1) The usefulness of the Representative's services;⁴

¹ 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.

² 5 U.S.C. § 8127.

³ 20 C.F.R. § 501.9(e).

⁴ 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;⁵
- (3) The capacity in which the Representative has appeared;⁶
- (4) The actual time spent in connection with the Board appeal;⁷ and
- (5) Customary local charges for similar services.⁸

The requested fee allegedly pertained to services performed before the Board in the above-referenced appeal but was dated August 20, 2011. The appeal in this case was dated July 28, 2011 and the Board's decision was dated March 21, 2012. The fee petition was dated August 20, 2011 but that date had been marked through by hand and a date of February 7, 2014 had been written across the top of the page.

By letter dated November 3, 2014, the Clerk of the Board advised counsel that the fee petition he had submitted was insufficiently detailed and ambiguous prohibiting the Board from rendering a reasoned decision. Counsel was provided thirty (30) days to submit a complete fee petition. A revised fee petition was submitted to the Board by counsel on November 24, 2014, providing clarification as to the date of the fee petition, the amount of the fees charged, and clarifying which fees were associated with representation of appellant before the Board.

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. No response was received.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. In its decision dated March 21, 2012, the Board affirmed the February 1, 2011 decision of OWCP. The Board found that appellant had not met her burden of proof to establish a recurrence of a medical condition on June 18, 2009 or a recurrence of disability on August 11, 2009 causally related to her previously accepted employment injury. The Board remanded the case, however, for further development as to whether appellant had sustained a new occupational injury. Counsel noted that as a result of his efforts on behalf of appellant, OWCP eventually accepted appellant's serious injuries.

On appeal appellant's counsel submitted an eight-page brief with supporting legal citation in support of his appeal, citing pertinent case law in support of his arguments. He argued

⁵ 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.

⁶ 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.

⁷ 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).

⁸ 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.

⁹ The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that she agreed with the requested fee for services rendered.

that OWCP had failed to follow its own procedures when denying appellant's claims for recurrence. Counsel provided a factual history of the claim and offered alternative arguments in support of his position. He argued that appellant's current claim should have been combined with her previous claims, citing to the Office of Workers' Compensation Programs (OWCP) procedures and Board precedent, and he also argued procedural defects in the OWCP decision.

OWCP's decision on appeal was dated February 1, 2011 and the appeal was filed with the Board on July 28, 2011. The fee petition requests approval of time from July 28, 2011 through March 30, 2012 and documents 21.3 hours spent in connection with this appeal before the Board at \$400.00 per hour for counsel.

The Board has reviewed the fee petition and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulations. The Board after review of the petition 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 19 U.S.C. § 292, collecting a fee without the approval of the Board may constitute a misdemeanor, subject to fine or imprisonment up to a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$8,520.00.¹⁰

Issued: April 28, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015 and did not participate in the preparation of this order.