

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

In the Matter of M.R., Appellant)	
)	
and)	Docket No. 12-1461
)	Issued: August 25, 2014
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Denver, CO, Employer)	
)	
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)	

Appearances: *Case Submitted on the Record*
Steven E. Brown, Esq., for the appellant
Office of Solicitor, for the Director

ORDER GRANTING FEE PETITION

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

Counsel for appellant has filed a request for approval of attorney's fee in the amount of one thousand, seven hundred and forty seven dollars (\$1,747.00).¹ By order dated April 3, 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 Board's March 29, 2013 decision found that the Office of Workers' Compensation Programs (OWCP) properly denied appellant's claim for modification of her November 30, 2006 wage-earning capacity decision. The May 1, 2012 OWCP decision was affirmed.

The documents on appeal include a five-page attachment to appellant's AB-1 form addressing the issue on appeal. Counsel cited to appropriate Board precedent on the issue of modification of a wage-earning capacity decision. In citing *A.J.*, Docket No. 10-619 (issued June 29, 2010) he pointed out that an "odd lot" or "makeshift" position could not be the basis of

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.

a wage-earning capacity decision and also cited to *J.M.*, Docket No. 07-482 (issued May 15, 2007) in support of his argument that a wage-earning capacity could not be used if it were outside appellant's physical job restrictions. Counsel argued that even if it were determined that the wage-earning capacity decision had been properly established, appellant's condition had worsened since its establishment, allowing for modification, citing to *K.H.*, Docket No. 08-2392 (issued April 21, 2009). Although the Board found that OWCP had properly denied the request to modify the wage-earning capacity, counsel's arguments were relevant and on point.

On April 14, 2014 counsel responded to the Board's April 3, 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.² Counsel addressed the usefulness of the representative services by noting he submitted legal argument in the claim with citation to Board precedent that was found relevant to the issue on appeal. He noted particularly the complexity of the employing establishment's national reassessment plan (NRP) which was the subject of an OWCP bulletin explaining how these unusual cases would be processed and the subject of significant litigation.

Counsel noted that the time spent on the appeal was documented and addressed the customary local charges for similar services. He specifically addressed the hourly rates charged by the staff of his law firm in this appeal. In this regard, however, the Board finds excessive billing while the appeal was pending before the Board. In many cases, counsel included multiple billings by various staff members for "conference w/attorney (or w/attorney and paralegal) re: current status" or "review of file for status meeting." In each of these meetings, which appear on the average of every six weeks, generally two attorneys and a paralegal are in attendance and bill for their time collectively. Each attendee's participation is described in the exact same fashion. No rationale was offered for this periodic practice. All of these status conferences took place after the appeal was filed with the Board and before the Board's decision was rendered. Absent a detailed explanation on how each particular conference assisted appellant in furtherance of this appeal, the billed amounts for these status conferences are disallowed. The amount billed on August 28, 2012 was \$150.00 for .4 hours. The amount billed on November 21, 2012 was

² Counsel cited to the provisions of the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Representatives' Services*, Chapter 2.1200.6 (June 2012) and inquired as to whether they pertain to uncontested fees for work performed before the Board. The procedures implemented by the Office of Workers' Compensation Programs (OWCP) with regard to the consideration of fees are separate from the Board's review of such applications under section 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).

\$150.00 for .4 hours. The amount billed on February 6, 2013 was \$114.50 for .3 hours. The Board will disallow these 1.1 hours for a total of \$414.50 as excessive and redundant.³

Included with the documents submitted to the Board for review of the request for approval of attorney fees was a letter to appellant dated April 27, 2013, requesting payment “at this time.” 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 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 finds that it otherwise 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 of one thousand, three hundred and thirty-two dollars and fifty cents (\$1,332.50).⁴

Issued: August 25, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees’ Compensation Appeals Board

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

³ While not directly pertaining to claims under FECA, the Board finds instructive the decision of the United States Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In any fee petition, counsel must use billing judgment and exclude redundant or unnecessary hours and to confirm that the fee requested is not excessive. Adequate documentation should be submitted to support the hours of work performed with specificity or a reasonably precise description of the work performed on behalf of the client.

⁴ Richard J. Daschbach, Chief Judge, who participated in the preparation in the decision, was no longer a member of the Board after May 16, 2014.