

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

In the Matter of L.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Corona, CA, Employer**

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**Docket No. 13-0664
Issued: August 17, 2016**

Appearances:
Toby Rubenstein, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING FEE PETITION

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge

The representative for appellant has filed a fee petition in the amount of \$1,465.00.¹ She filed the request under the Office of Workers' Compensation Programs' (OWCP) regulations, 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'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 There is no option for the fees to be "deemed approved" under the Board's regulations.

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).

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

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

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.⁹ Appellant provided a letter received by the Clerk of the Board on December 8, 2015, in which he noted reviewing and approving the representative's itemized fee. Appellant stated that he was "fully satisfied with the end result and the accuracy and fairness of the time spent and charges of \$1,465.00."

The requested fees pertain to services performed before the Board in the above-referenced appeal. OWCP's decision on appeal was dated August 8, 2012, affirming a December 5, 2011 decision denying wage-loss compensation commencing November 18, 2010. The appeal was filed with the Board on January 29, 2013, and a supporting brief was filed with the Board on January 31, 2013. In the decision dated January 28, 2014, the Board set aside OWCP's August 8, 2012 decision.

On appeal, the representative submitted a 15-page brief addressing the issues on appeal. She cited many legal authorities in support of her arguments, including relevant Board precedent and appropriate portions of the Federal (FECA) Procedure Manual related to the impact of defects in a statement of accepted facts. The representative also enumerated errors and omissions in statements of accepted facts provided to the second opinion physicians in the case.

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.

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 FECA appeals.

⁹ 20 C.F.R. § 501.9(e).

The representative also cited to the procedure manual in asserting that an October 1, 2010 job offer was invalid.

The fee petition requests approval of time from December 21, 2012 to February 1, 2014. It documents 15.40 hours spent in connection with this appeal before the Board at \$75.00 per hour for Richard Kullick, a paralegal, and 3.10 hours of work by the representative at the rate of \$100.00 an hour.

The Board has carefully reviewed the fee petition and finds it satisfies the requirements of section 501.9(e) of the Board's implementing regulations. The Board 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 18 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 \$1,465.00.¹⁰

Issued: August 17, 2016
Washington, DC

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

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

¹⁰ Michael E. Groom, Alternate Judge, participated in the original decision, but was no longer a member of the Board effective December 27, 2014. James A. Haynes, Alternate Judge, also participated in the original decision, but was no longer a member of the Board effective November 16, 2015.