United States Department of Labor Employees' Compensation Appeals Board

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M.H., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, New York, NY, Employer

Docket No. 13-825 Issued: May 15, 2014

Appearances: Paul Kalker, Esq., for the appellant *Office of Solicitor*, for the Director Case Submitted on the Record

ORDER GRANTING ATTORNEY'S FEE

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

Counsel for appellant has filed a request for approval of attorney's fee in the amount of three thousand, seven hundred and twelve dollars (\$3,712.00). He filed the request under the Office of Workers' Compensation Programs' *Rules of Procedure*, pursuant to 20 C.F.R. § 10.145.

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

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 Appellant responded by letter received October 7, 2013 advising that she was satisfied with the representation by Mr. Kalker and that the fee was reasonable.

The Board, having considered the fee petition and supporting documentation, grants the fee petition.

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).

IT IS HEREBY ORDERED THAT the fee petition is granted in the sum of three thousand, seven hundred and twelve dollars (\$3,712.00).

Issued: May 15, 2014 Washington, DC

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

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

> James A. Haynes, Alternate Judge Employees' Compensation Appeals Board