

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

In the Matter of J.O., Appellant

and

**DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Wichita, KS, Employer**

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**Docket No. 14-0039
Issued: December 20, 2016**

Appearances:

*John S. Evangelisti, 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
MICHAEL E. GROOM, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$6,562.50.¹ 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

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 No response was received.¹⁰

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether OWCP properly terminated appellant's wage-loss compensation and medical benefits on October 24, 2012 in its May 31, 2013 decision. By decision dated April 2, 2014, the Board reversed OWCP's May 31, 2013 termination decision due to an unresolved conflict in medical opinion.

On appeal, counsel submitted a 13-page brief arguing OWCP did not properly terminate appellant's wage-loss compensation and medical benefits. Counsel cited Board precedent and FECA procedural manual to support his argument on appeal.

OWCP's decision on appeal was dated May 31, 2013 and the appeal was filed with the Board on October 14, 2013. The fee petition requests approval of time from June 24, 2013 through April 18, 2014 and documents 28.7 hours spent in connection with this appeal before the Board at \$300.00 per hour for John S. Evangelisti, Esq., \$225.00 per hour for Christopher Lopez, Associate, and \$175.00 per hour for Jodi Waldron, paralegal.

The Board notes that it is difficult to ascertain the services for which fees are being charged when the document presented for approval includes fees for services before both OWCP and the Board. It is requested that only the fees charged for work before the Board be included in the request to be approved by the Board. The Board strongly discourages counsel from submitting petitions with redactions, corrections, or additions because the Board is without knowledge of who made the changes or why they were made.

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 20 C.F.R. § 501.9(e).

¹⁰ The Board notes that included with the counsel's fee petition was a signed statement from appellant indicating that she found the requested fee to be reasonable and appropriate.

The Board has nonetheless 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 of \$6,562.50 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 for up to a year or both.”

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$6,562.50.¹¹

Issued: December 20, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ Michael E. Groom, Alternative Judge, participated in the original decision but was no longer a member of the Board effective December 27, 2014 and did not participate in the preparation of this order.