

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

C.M., Appellant)	
)	
and)	Docket No. 14-0116
)	Issued: December 2, 2016
DEPARTMENT OF DEFENSE, DEFENSE)	
COMMISSARY AGENCY, Fort Lee, VA,)	
Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
Daniel M. Goodkin, Esq., for the appellant	
Office of Solicitor, for the Director	

ORDER GRANTING FEE PETITION

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,554.00.¹ 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 Act² (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

Under these regulations, the Board must consider the petition under the following general criteria:

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

¹ FECA (5 U.S.C. § 8127(b)) and its implementing regulation (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.

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated June 19, 2013, the Office of Workers' Compensation Programs (OWCP) found that appellant did not meet his burden of proof to establish an injury in the performance of duty on August 24, 2011. It determined that appellant had not established that he was beaten by three men on that date while in the performance of his federal duties or in retaliation for being a whistleblower. By decision dated July 2, 2014, the Board affirmed OWCP's June 19, 2013 decision noting that appellant had not established the factual aspects of his claim.

On appeal counsel submitted a four-page brief presenting the factual history of the case and providing Board precedent regarding the establishment of an injury in the performance of duty. He argued that appellant had established an injury in the performance of duty on August 24, 2011 because there was no evidence contradicting his claim that he was beaten on that date in retaliation for being a whistleblower.

On August 17, 2014 counsel submitted a fee petition and a statement of service requesting approval of fees totaling \$1,554.00.

OWCP's decision on appeal was dated June 19, 2013 and the appeal was filed with the Board on October 21, 2013. The fee petition requests approval of services from September 18, 2013 through February 21, 2014 and documents 4.8 hours spent in connection with this appeal

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).

before the Board at \$425.00 per hour for 2.4 hours for Daniel M. Goodkin, Esq., \$525.00 per hour for 0.2 hours for Steven E. Brown, Esq., and \$195.00 per hour for 2.2 hours for Paralegal Erika Bauer. The fee petition described the specific services provided for the amount claimed.

In this regard, however, the Board finds excessive billing while the appeal was pending before the Board. The fee petition reflects charges on November 7, 2013 and February 21, 2014 described as “Office meeting re case status.” No rationale or justification for these charges was offered. Absent a detailed explanation on how each particular listed service and each participant assisted appellant in furtherance of this appeal, the billed amounts for these listed services are disallowed. The Board will disallow .60 hours (November 7, 2013 and February 21, 2014) as excessive and redundant:¹⁰

Daniel M. Goodkin	0.20@	\$425.00	\$ 85.00
Steven M. Brown	0.20@	\$525.00	\$105.00
Erika Bauer	0.20@	\$195.00	\$ <u>39.00</u>
Total:	0.60		\$ 229.00

The Board has carefully reviewed the fee petition and finds it, as modified, otherwise satisfies the requirements of section 501.9(e) of the Board’s implementing regulations.

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.

¹⁰ 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.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,325.00.¹¹

Issued: December 2, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹¹ James A. Haynes, Alternate Judge, participated in the preparation of 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.