

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

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**In the Matter of A.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bronxville, NY, Employer**

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**Docket No. 14-0153  
Issued: August 29, 2016**

*Appearances:*  
*Martin Kaplan, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER GRANTING FEE PETITION**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
MICHAEL E. GROOM, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$2,325.75.<sup>1</sup> 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,<sup>2</sup> and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).<sup>3</sup>

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

- (1) The usefulness of the Representative's services;<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> *Id.* § 8127.

<sup>3</sup> 20 C.F.R. § 501.9(e).

<sup>4</sup> 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;<sup>5</sup>
- (3) The capacity in which the Representative has appeared;<sup>6</sup>
- (4) The actual time spent in connection with the Board appeal;<sup>7</sup> and
- (5) Customary local charges for similar services.<sup>8</sup>

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. No response was received.<sup>9</sup>

The requested fee pertains to services performed before the Board in the above-referenced appeal. The underlying issue was whether OWCP properly terminated appellant's compensation effective June 24, 2009 as he had no further disability due to his November 8, 2007 employment injury and whether he established a cervical condition due to his accepted work injury. In a decision dated July 31, 2013, OWCP denied modification of its termination of appellant's compensation effective June 24, 2009 and its finding that he did not establish an employment-related cervical condition. By decision dated July 2, 2014, the Board reversed in part and set aside in part the July 31, 2013 decision. The Board found that OWCP improperly terminated appellant's compensation effective June 24, 2009 and that the record contained a medical conflict regarding whether he sustained a cervical condition as a result of employment factors.

On appeal counsel submitted a two-page brief and AB-1 form in support of his argument that OWCP did not meet its burden of proof to terminate appellant as the impartial medical examiner's report was insufficiently rationalized and not based on the most recent diagnostic evidence. He also contended that the statement of accepted facts was not accurate. Counsel cited Board precedent to support his arguments on appeal.

Counsel submitted a fee petition on September 2, 2014 describing the services he performed on behalf of appellant before the Board, the time spent on the services, and the time claimed.

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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 FECA appeals.

<sup>9</sup> The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that he agreed with the requested fee for services rendered.

OWCP's decision on appeal was dated July 31, 2013 and the appeal was filed with the Board on October 28, 2013. The fee petition requests approval of time from October 21, 2013 to July 15, 2014 and documents 6.4 hours spent by counsel in connection with this appeal before the Board at a rate of \$375.00 an hour. Counsel explained that he had practiced law for more than 15 years primarily representing injured federal workers.

The Board has carefully reviewed the fee petition and finds that it satisfies the requirements of section 501.9 (e) of the Board's implementing regulation. 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 19 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 sum of \$2,325.75.<sup>10</sup>

Issued: August 29, 2016  
Washington, DC

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

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

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<sup>10</sup> Michael E. Groom, Alternate 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. James A. Haynes, Alternate Judge, participated in 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.