

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

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In the Matter of R.G., Appellant )  
and ) Docket No. 14-0480  
DEPARTMENT OF THE INTERIOR, ) Issued: November 25, 2016  
NATIONAL PARK SERVICE, )  
Page, AZ, Employer )  

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*Appearances:*

*Steven E. Brown, 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  
COLLEEN DUFFY KIKO, Judge

Counsel for appellant has filed a fee petition in the amount of \$1,038.00.<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> (FECA) 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.* at § 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 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;<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.<sup>9</sup> No response was received.<sup>10</sup>

The requested fees pertain to services performed before the Board in the above-referenced appeal. By order dated October 23, 2014, the Board set aside an OWCP's decision dated December 16, 2013. The Board noted that, following a June 7, 2013 OWCP decision that found the position of information clerk fairly and reasonably represented appellant's wage-earning capacity, counsel requested an oral hearing and submitted additional medical evidence. In its December 16, 2013 decision, OWCP affirmed the June 7, 2013 decision, but it had failed to consider one of the medical reports submitted by counsel. The Board remanded the case to OWCP to enable it to properly consider all the evidence submitted prior to the issuance of the December 16, 2013 decision.

On appeal counsel submitted a three-page brief addressing the issues on appeal. He cited legal authorities in support of his arguments. Counsel also identified and argued medical evidence to challenge OWCP's wage-earning capacity decision.

OWCP's decision on appeal was dated December 16, 2013, the appeal was filed with the Board on December 31, 2013 and a supporting brief was filed with the Board on the same date. The fee petition requests approval of time from December 23, 2013 through December 16, 2014 and documents 3.20 hours spent in connection with this appeal before the Board at \$425.00 per hour for Daniel M. Goodkin, Esquire, \$195.00 per hour for Paralegal Erika Bauer and \$195.00 per hour for Paralegal Jessica Gordon.

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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 representative must establish the complex or unusual nature of the appeal.

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> 20 C.F.R. § 501.9(e).

<sup>10</sup> The Board notes that included with the representative's fee petition was a January 12, 2015 signed statement from appellant indicating her agreement with the requested fee for services rendered.

On January 27, 2015 counsel submitted a fee petition describing the services performed on behalf of appellant before the Board, the time spent on the services, and the exact amount claimed.

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 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 amount of \$1,038.00.

Issued: November 25, 2016  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board