

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

In the Matter of J.W., Appellant

and

**U.S. POSTAL SERVICE, SCOTTSDALE HOPI
STATION, Scottsdale, AZ, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 14-0636
Issued: November 23, 2016**

Appearances:
Steven E. Brown, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING FEE PETITION

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,095.00.¹ 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 Act,² (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

Pursuant to its 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.¹⁰

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated July 18, 2014, the Board affirmed the Office of Workers' Compensation Programs' (OWCP) July 25, 2013 decision noting that appellant had not established a February 22, 2006 injury in the performance of duty.

On appeal counsel submitted a five-page brief which addresses the factual history of the case and presents Board precedent regarding the establishment of an injury in the performance of duty under the human instincts doctrine. Counsel argued that the employing establishment failed to provide adequate medical aid or other means of relief to appellant on February 22, 2006 and that this failure contributed to the vehicular accident that occurred on that date.

On September 29, 2014 counsel provided a fee petition and a statement of service requesting approval of fees totaling \$1,095.00.¹¹

OWCP's decision on appeal was dated July 25, 2013 and the appeal was filed with the Board on January 20, 2014. The fee petition lists services from January 8 through July 21, 2014

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).

¹⁰ The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that the requested fee of \$1,095.00 was reasonable and appropriate. Appellant expressed his understanding that he was responsible for payment of the fee.

¹¹ Counsel noted that he had "voluntarily reduced" the requested fee from \$2,190.75 to \$1,095.00. The Board further notes that the voluntary reduction in fees comports with a reasonable fee for work performed without fees charged for periodic case status conferences. *See In the Matter of W.J., Order Granting Fee Petition*, Docket No. 08-2411 (issued August 25, 2014).

and documents 5.55 hours spent in connection with this appeal before the Board at \$525.00 per hour for 3.15 hours for Stephen E. Brown, Esq., \$425.00 per hour for 0.3 hours for Daniel M. Goodkin, Esq., \$195.00 per hour for 1.6 hours for Paralegal Jessica Gordon, and \$195.00 per hour for 0.5 hours for Paralegal Erika Bauer. The fee petition describes the specific services provided for the amounts listed. On the fee petition, counsel noted that he had “voluntarily reduced” the requested fee to \$1,095.00.

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 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 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.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,095.00.¹²

Issued: November 23, 2016
Washington, DC

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

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

¹² Michael E. Groom, Alternate Judge, participated in the Board’s July 18, 2014 decision but was no longer a member of the Board effective December 27, 2014 and did not participate in the preparation of this order.