

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

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

**and**

**U.S. POSTAL SERVICE, BULK MAIL  
CENTER, Denver, CO, Employer**

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**Docket No. 14-1516  
Issued: May 12, 2017**

*Appearances:*

*John S. Evangelisti, 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 filed a fee petition in the amount of \$2,270.00.<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. No response was received.

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether OWCP met its burden of proof to justify the reduction of appellant's wage-loss compensation as he currently had the capacity to earn full-time wages in the selected position of cashier II. By decision dated July 14, 2015, the Board reversed OWCP's decision and found that OWCP did not meet its burden to justify the reduction of appellant's wage-loss compensation. The Board found that the opinion of the referral physician did not clearly and unequivocally establish that appellant had the capacity to earn full-time wages in the selected position of cashier II.

On appeal counsel submitted an eight-page brief with supporting legal citation in support of his appeal, citing pertinent case law in support of his arguments. He provided a factual history of the claim and offered alternative arguments in support of his position. Counsel argued that the reduction of benefits should be reversed because the work restrictions set by the referral physician exceeded the physical demands of the selected position of cashier II. He also argued, *inter alia*, that OWCP erred by acting in a medical rather than adjudicatory capacity, that OWCP failed to resolve a conflict in the medical evidence regarding restrictions, and that the position description should have been forwarded to the treating physician for review.

OWCP's decision on appeal was dated January 24, 2014 and the appeal was filed with the Board on June 24, 2014. The fee petition requests approval of time from May 5 through August 19, 2014 and documents 9.05 attorney hours spent in connection with this appeal before the Board at \$250.00 per hour for John S. Evangelisti, Esquire, and 0.10 hours at \$75.00 for Paralegal Jodi Waldron. In his fee petition, counsel noted that he zealously represented appellant's interest and presented specific arguments in his appeal brief. He noted that his usual hourly rate was \$300.00 and \$175.00 for his paralegal, that this fee was reasonable and customary, but that he represented appellant at his lower 2001 rates.

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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.

The Board has reviewed the fee petition and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulations. The Board after review of the petition 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 \$2,270.00.

Issued: May 12, 2017  
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