

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

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In the Matter of K.B., Appellant)	
)	
and)	Docket No. 14-1560
)	Issued: April 19, 2018
DEPARTMENT OF THE ARMY, FORT)	
LEONARD WOOD, Nixa, MO, Employer)	
_____)	

Appearances:
Daniel M. Goodkin, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of four thousand, two hundred, and twenty eight dollars (\$4,228.00).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

¹ 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.

² 5 U.S.C. § 8127.

³ 20 C.F.R. § 501.9(e).

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

- (1) The usefulness of the Representative's services;⁴
- (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. The underlying issue was whether appellant met her burden of proof to establish an April 13, 2013 claim for benefits based on an emotional condition. By decision dated May 22, 2014 OWCP denied appellant's claim, finding that she failed to establish any compensable factor of employment and thus fact of injury was not established. On appeal counsel submitted a seven-page brief presenting the facts and Board precedent in similar cases. He argued that appellant had provided sufficient factual evidence to establish compensable factors of employment including overwork, air travel, and exposure to heat. By order dated December 21, 2015, the Board set aside the May 22, 2014 decision, finding that it did not contain adequate findings of fact. The Board remanded the case for a proper decision including findings of fact and a clear, precise statement regarding the basis for the decision.¹¹

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.

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 the FECA appeals.

⁹ 20 C.F.R. § 501.9(e).

¹⁰ The Board notes that included with the counsel's fee petition was a signed statement from appellant indicating that she found the requested fee to be reasonable and appropriate.

¹¹ *Order Remanding Case*, Docket No. 14-1560 (issued December 21, 2015).

Counsel provided a fee petition and statement of service before the Board. OWCP's decision on appeal was dated May 22, 2014 and the appeal was filed on July 8, 2014. The Board issued its order remanding case on December 21, 2015. The fee petition requests approval of time from June 19, 2014 through August 14, 2015 and documents 10.50 hours spent in connection with this appeal before the Board, including 7.10 hours at \$425.00 per hour for Daniel M. Goodkin, Esq., for a total of \$3,017.50; .30 hours at \$525.00 per hour for Steven E. Brown, Esq., for a total of \$525.00; and 5.40 hours at \$195.00 per hour Paralegal Erika Bauer, for a total of \$1,053.00.

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 18 U.S.C. § 292, collecting a fee without the approval of the Board may constitute a misdemeanor, subject to fine or imprisonment for up to a year or both.”

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$4,228.00.¹²

Issued: April 19, 2018
Washington, DC

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

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

¹² Colleen Duffy Kiko, Judge, participated in the preparation of the original order, but was no longer a member of the Board effective December 11, 2017.