

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

In the Matter of D.B., Appellant)	
)	
and)	Docket No. 14-1726
)	Issued: April 13, 2018
U.S. POSTAL SERVICE, POST OFFICE, Rochester, NY, Employer)	
)	

Appearances:
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER DENYING FEE PETITION

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

Counsel for appellant has filed a request for approval of attorney's fee in the amount of seven thousand dollars (\$13,776.25.00). The Board notes that all petitions for approval of fees for representative services are considered under the Board's *Rules of Procedure* found at 20 C.F.R. § 501.9.¹

Under these regulations, the Board must consider the petition under the following general criteria:

- (1) The usefulness of the Representative's services;²

¹ 5 U.S.C. § 8127, 20 C.F.R. § 501.9(e).

² 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 by the representative 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;³
- (3) The capacity in which the Representative has appeared;⁴
- (4) The actual time spent in connection with the Board appeal;⁵ and
- (5) Customary local charges for similar services.⁶

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.⁷ No response was received.

The Board, having considered the fee petition and supporting documentation, denies the fee petition. The Board finds that the petition provides insufficient information to allow approval of any portion of the amount claimed. The Board notes the following defects:⁸

- (1) Counsel submitted billing charges dated prior to the filing of appellant's appeal to the Board and did not explain why these charges are relevant to the subject appeal.
- (2) Counsel submitted statements with cost items that have been redacted with a marker. The Board has no knowledge of why the material was redacted and by whom.
- (3) The fee petition does not adequately delineate the services performed relative to the appeal before the Board and for what purposes. Discrete, listed services billed separately were not adequately described. Counsel used entries of three or four words to identify and explain the services the Board has been asked to approve.

³ 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.

⁴ 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.

⁵ The Board's evaluation of a representative'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).

⁶ 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 Federal Employees' Compensation Act appeals.

⁷ 20 C.F.R. § 501.9(e).

⁸ This list is intended to assist the representative, but does not limit the Board's discretion to evaluate any future fee petition on its own merits.

IT IS HEREBY ORDERED THAT the fee petition is denied and may be resubmitted to the Board within 60 days of the date of this order.

Issued: April 13, 2018
Washington, DC

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

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

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