

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

In the Matter of S.R., Appellant)	
)	
and)	Docket No. 14-1754
)	Issued: November 1, 2016
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer)	
)	
)	
)	

Appearances: *Case Submitted on the Record*
Daniel M. Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

ORDER GRANTING FEE PETITION

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$3,442.00.¹ The Board notes that all petitions for approval of fees for representative's services are considered under the Board' statutory authority found at section 8127 of the Federal Employees' Compensation Act,² and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

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

- (1) The usefulness of the Representative's services;⁴

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 *Id.* at § 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 attorney with the client, the factual evidence and legal argument offered by the attorney and written pleadings filed in the case. The Board will also consider the usefulness of an attorney'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. No response was received.⁹

The requested fee pertains to services performed before the Board in the above-referenced appeal. The underlying issue was whether OWCP properly reduced appellant's compensation as she had the capacity to earn wages in the constructed position of information clerk. In a decision dated June 26, 2014, OWCP reduced her compensation effective July 28, 2013 based on its determination that she had the physical and vocational capacity to earn wages as an information clerk. By decision dated January 8, 2015, the Board reversed the June 26, 2014 decision after finding that the record contained an unresolved conflict in medical opinion.

On appeal counsel submitted a 10-page brief in support of his argument that OWCP erred in reducing appellant's compensation. He argued that it relied upon stale medical evidence, that the position of information clerk exceeded her medical restrictions, and that it did not consider her preexisting cervical condition. In the alternative, counsel argued that the record contained a conflict in medical opinion. He cited Board precedent to support his arguments on appeal.

On February 26, 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.

OWCP's decision on appeal was dated June 26, 2014 and the appeal was filed with the Board on August 11, 2014. The fee petition requests approval of time from July 28, 2014 through January 13, 2015 and documents 8.60 hours spent in connection with this appeal before the Board at \$425.00 per hour for Daniel M. Goodkin, Esquire, \$525.00 per hour for Steven E.

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

⁶ The Board's consideration of the "capacity" in which an attorney appears includes, but is not limited to, whether the attorney obtained a written retainer and fee agreement.

⁷ The Board's evaluation of an attorney'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).

⁸ The Board's consideration of customary, local fees recognizes that attorneys often have clients in several states and that local custom must be balanced against national practice in the FECA appeals.

⁹ The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that she agreed with the requested fee for services rendered.

Brown, Esquire, \$195.00 per hour for Erika Bauer, paralegal, and \$195.00 for Jessica Pope, paralegal.

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 regulation. 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 sum of \$3,442.00.¹⁰

Issued: November 1, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁰ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015 and did not participate in the preparation of this order.