

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

In the Matter of T.I., Appellant	)	
	)	
and	)	Docket No. 15-0183
	)	Issued: May 24, 2017
DEPARTMENT OF THE ARMY, MADIGAN	)	
ARMY MEDICAL CENTER, WA, Employer	)	
	)	
	)	

*Appearances:*  
Eric L. Pines, 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  
JAMES A. HAYNES, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$2,500.00.<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> 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 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;<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.<sup>9</sup> No response was received.<sup>10</sup>

The requested fee pertains to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant sustained an injury on July 18, 2012 in the performance of duty. In a decision dated May 8, 2014, the Office of Workers' Compensation Programs (OWCP) denied his claim as he did not establish the occurrence of the alleged July 18, 2012 work incident. By decision dated March 24, 2015, the Board set aside the May 8, 2014 decision. The Board found that appellant had established the occurrence of the July 18, 2012 employment incident and remanded the case for OWCP to evaluate the medical evidence.

On appeal counsel submitted a 14-page brief in support of his argument that appellant sustained an injury on July 18, 2012 in the performance of duty. He contended that the factual evidence supported the occurrence of the July 18, 2012 work incident and that the medical evidence was sufficient to establish causal relationship. Counsel cited Board precedent to support his arguments on appeal.

On June 18, 2015 counsel provided 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. He also submitted a signed April 14, 2015 statement from appellant finding the fee reasonable.

OWCP's decision on appeal was dated May 8, 2014 and the appeal was filed with the Board on November 4, 2014. The fee petition requests approval of time from October 24, 2014

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

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> 20 C.F.R. § 501.9(e).

<sup>10</sup> The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that he agreed with the requested fee for services rendered.

to January 30, 2015 and documents 8.33 hours spent by counsel in connection with this appeal before the Board at a rate of \$300.00 an hour. Counsel explained that he had practiced law for 18 years and solely represented federal employees in administrative proceedings.

The Board finds, however, the amount charged on November 4, 2014 for \$180.00 for “Review and Upload of Lazio 9-25-14 med rpt” to be an inappropriate charge before the Board. The Board can receive no new medical evidence and there is no medical report in the Board docket file. That entry may be for uploading the medical report into the Integrated Federal Employees’ Compensation System (iFECS) but is not relevant to the Board proceeding. The Board will disallow this charge of \$180.00.

The Board has carefully reviewed the fee petition and finds it, as modified, otherwise satisfies the requirements of section 501.9(e) of the Board’s implementing regulations.

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 \$2,320.00.<sup>11</sup>

Issued: May 24, 2017  
Washington, DC

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

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

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<sup>11</sup> 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.