

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

_____)	
In the Matter of D.V., Appellant)	
)	
and)	Docket No. 15-0402
)	Issued: June 22, 2017
DEPARTMENT OF THE AIR FORCE, TRAVIS)	
AIR FORCE BASE, CA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES A. HAYNES, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$2,665.50.¹ The Board notes that all petitions for approval of fees for representative's services performed before the Board 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

Pursuant to its regulations, the Board considered the petition under the following general 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 5 U.S.C. § 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 regulation, appellant has been afforded written notice of the fee requested and provided an opportunity to comment on the fee petition.⁹ Appellant provided a signed statement indicating that the requested fee of \$2,665.50 was reasonable and appropriate and expressed her understanding that she was responsible for payment of the fee.

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant had established an employment-related disability on or after April 4, 1993. By decision dated December 3, 2013, OWCP denied the claim for wage-loss compensation from April 4, 1993. An OWCP hearing representative affirmed the December 3, 2013 decision on November 14, 2014. By decision dated June 9, 2015, the Board affirmed the November 14, 2014 decision. Counsel filed a petition for reconsideration with the Board on June 23, 2015. The Board denied the petition for reconsideration by order dated December 7, 2015.

On appeal counsel submitted an eight-page brief arguing that the report of the impartial medical specialist, Dr. John Sampson, a Board-certified neurosurgeon, was internally inconsistent with respect to diagnostic studies and not sufficient to constitute the weight of the medical evidence. He reviewed the report in detail with respect to the issue presented and the medical history.

On January 11, 2016 counsel provided a fee petition and a statement of service requesting approval of fees totaling \$2,665.50. The fee petition application documents 7.30 hours spent in connection with the appeal before the Board. The fee petition describes the specific tasks carried out by counsel and two paralegals, as well as the amount of time each task required. It also documents the customary local charges for similar services of counsel and the paralegal as \$425.00 and \$195.00 per hour, respectively.

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 Federal Employees' Compensation Act appeals.

⁹ 20 C.F.R. § 501.9(e).

The Board has reviewed the fee petition and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulation. Counsel provided a detailed brief which aided the Board in its consideration of the issue on appeal, and provided an appropriate itemized statement of the services performed with respect to the appeal. 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 a fine or imprisonment for up to a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$2,665.50.¹⁰

Issued: June 22, 2017
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

¹⁰ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.