

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

In the Matter of P.P., Appellant)	
)	
and)	Docket No. 15-0522
)	Issued: December 13, 2016
DEPARTMENT OF THE ARMY, ARMY)	
CORPS OF ENGINEERS, Sacramento, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,430.25.¹ 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

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 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 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.

- (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 fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant met his burden of proof to establish an employment-related injury in the performance of duty on October 4, 2013. By decisions dated April 9 and December 23, 2014, OWCP denied appellant's claim, finding that his fall on October 4, 2013 was idiopathic and therefore not compensable. By decision dated June 1, 2016, the Board found that appellant's fall on October 4, 2013 was an unexplained fall that occurred in the performance of duty. As such, the case was not in posture for decision regarding the nature and extent of any injury or disability that resulted from the fall.

On appeal, counsel submitted a 10-page brief addressing the factual history of the case and presented Board precedent addressing idiopathic and unexplained falls. He argued that the October 4, 2013 fall was not idiopathic and occurred in the performance of duty. Counsel requested that the denial be reversed.

On June 27, 2016 counsel filed a fee petition and a statement of service.

OWCP's decision on appeal was dated December 23, 2014 and the appeal was filed with the Board on January 20, 2015. The Board issued its decision on June 1, 2016. The fee petition requests approval of time from January 5, 2015 through June 2, 2016 and documents 4.45 hours spent in connection with this appeal before the Board at \$425.00 and \$475.00 an hour for Daniel M. Goodkin, Esq., \$525.00 an hour for Steven E. Brown, Esq., and \$195.00 per hour for Paralegals Erika Bauer and Jessica Pope. The fee petition described the specific services provided for the amount claimed.

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 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.

The Board has carefully reviewed the fee petition, and finds 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 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 \$1,430.25.¹⁰

Issued: December 13, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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