

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

In the Matter of S.H., Appellant)
and) Docket No. 15-1925
U.S. POSTAL SERVICE, NETWORK) Issued: June 13, 2018
DISTRIBUTION CENTER, Denver, CO,)
Employer)

)

Appearances:

Gregory Hall, 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
COLLEEN DUFFY KIKO, Judge

Counsel for appellant filed a request for approval of an attorney fee in the amount of \$2,620.00.¹ 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).

Pursuant to its regulations, the Board must consider the fee petition under the following criteria:

- (1) The usefulness of the representative's services;³

¹ FECA (5 U.S.C. § 8127 (b)) 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 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;⁴
- (3) The capacity in which the representative has appeared;⁵
- (4) The actual time spent in connection with the Board appeal;⁶ and
- (5) Customary local charges for similar services.⁷

As required by the Board's *Rules of Procedure*, appellant has been afforded written notice of the fee requested and provided an opportunity to comment on the fee petition.⁸ No response was received. Included with counsel's fee petition, however, was an October 22, 2015 signed statement from appellant, indicating that the requested fee of \$2,620.00 was reasonable and appropriate.

The requested fees pertain to services performed before the Board on the above-referenced appeal. The underlying merit issue was whether appellant met his burden of proof to establish permanent impairment of the right upper extremity. By decision dated July 8, 2014, the Office of Workers' Compensation Programs (OWCP) found appellant had two percent permanent impairment of the right upper extremity. The period of the schedule award was 8.24 weeks from May 19, 2014. By decision dated April 8, 2015, an OWCP hearing representative affirmed the July 8, 2014 schedule award.

On appeal counsel submitted a nine-page brief in support of his argument that OWCP improperly determined the percentage of impairment in appellant's right upper extremity. He reviewed the history and argued that the medical evidence of record was not properly considered by OWCP. By decision dated February 10, 2017, the Board set aside the April 8, 2015 OWCP decision and remanded the case for a *de novo* decision on appellant's claim for an upper extremity schedule award following OWCP's development of a consistent method for calculating upper extremity permanent impairment to be applied uniformly, and other such development as deemed necessary.

On June 14, 2017 counsel submitted a fee petition and statement of service before the Board, requesting approval of fees totaling \$2,620.00. The fee petition pertains to services performed before the Board in the above-referenced appeal. OWCP's decision on appeal was dated April 8, 2015. The fee petition requests approval of services from September 22 to 29, 2015

⁴ 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.

⁵ 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.

⁶ 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).

⁷ 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 FECA appeals.

⁸ 20 C.F.R. § 501.9(e).

and documents 13.10 total hours spent in connection with this appeal before the Board at \$200.00 per hour. The fee petition described the specific services provided for the amount claimed. It also documents the customary local charges for similar services of counsel as \$200.00 per hour.

The Board has carefully reviewed the fee petition and finds that it satisfies the requirements of section 501.9(e) of the Board's *Rules of Procedure*.⁹

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 \$2,620.00.¹⁰

Issued: June 13, 2018
Washington, DC

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

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

⁹ *Id.*

¹⁰ Colleen D. Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017 and did not participate in the preparation of this order.