

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

In the Matter of C.L., Appellant)	
)	
and)	Docket No. 16-0003
)	Issued: November 17, 2017
U.S. POSTAL SERVICE, NORTHERN NEW JERSEY METRO PROCESSING & DISTRIBUTION CENTER, Teterboro, NJ, Employer)	
)	
)	
)	

Appearances:
Thomas S. Harkins, 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 has filed a fee petition in the amount of \$4,000.00.¹ 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).³

¹ FECA at 5 U.S.C. § 8127(b) and its implementing regulations at 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).

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

- (1) The usefulness of the Representative's services;⁴
- (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.⁹ No response was received.¹⁰

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying merit issue was whether appellant met his burden of proof to establish that a December 11, 2013 respiratory failure occurred in the performance of duty. By decision dated February 10, 2014, OWCP denied appellant's claim, finding that he had not established that the claimed event occurred as described. On reconsideration dated August 7, 2014, it reviewed the merits of appellant's claim and affirmed its prior decision of February 10, 2014. Appellant filed another request for reconsideration on October 1, 2014. By decision dated April 13, 2015, OWCP denied his reconsideration request without conducting a merit review. In a decision dated July 5, 2016, the Board found that OWCP properly denied the reconsideration request.

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.

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 FECA appeals.

⁹ 20 C.F.R. § 501.9(e).

¹⁰ The Board notes that included with the counsel's fee petition was a signed statement from appellant indicating that he found the requested fee to be reasonable and appropriate.

On appeal counsel submitted an eight-page brief presenting a factual pattern and Board precedent in similar cases. He argued that Board precedent supported a merit review of appellant's claim.

OWCP's decision on appeal was dated April 13, 2015 and the appeal was filed with the Board on October 2, 2015. The Board issued its decision on July 5, 2016. The fee petition requests approval of time from September 11 through December 8, 2015, and documents 17.9 hours spent in connection with this appeal before the Board at \$225.00 per hour for Thomas S. Harkins, Esquire. The fee petition described the specific services provided for the amount claimed.

The Board has carefully reviewed the fee petition and finds it satisfies the requirements of section 501.9(e) of the Board's implementing regulations. 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 \$4,000.00

Issued: November 17, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board