

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

In the Matter of W.W., Appellant)	
)	
and)	Docket No. 16-0651
)	Issued: April 19, 2018
DEPARTMENT OF HOMELAND SECURITY, CITIZENSHIP & IMMIGRATION SERVICES, Lee's Summit, MO, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,985.50.¹ 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 by the representative 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 merit issue was whether appellant met her burden of proof to establish an injury causally related to an October 15, 2012 employment incident. By decision dated September 29, 2015, the Office of Workers' Compensation Programs (OWCP) denied the claim, finding that appellant had not submitted sufficient medical evidence to establish causal relationship.

On appeal counsel submitted an eight-page brief presenting the facts and Board precedent in similar cases. By decision dated June 20, 2016, the Board affirmed OWCP's September 29, 2015 decision.

By letter dated July 14, 2016, appellant, through counsel, filed a timely petition for reconsideration. Counsel submitted a 7-page brief in support of the petition for reconsideration. He argued that the Board had erred in finding that the medical evidence of record was insufficient to establish causal relationship in appellant's claim. Counsel further argued that the Board had not accepted a treating physician's report, alone, as sufficient to establish a claim, in a number of other cases. The Director of OWCP filed an answer on August 23, 2016, contending that the petition for reconsideration should be denied. By order dated May 25, 2017, the Board denied appellant's petition for reconsideration, finding that it failed to establish error of fact or law warranting further consideration.

On September 14, 2017 counsel provided a fee petition and statement of service before the Board, requesting approval of fees totaling \$1,985.50. The requested fees pertain to services

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 Included with counsel's fee petition, however, was a September 1, 2017 signed statement by appellant that the fees requested were reasonable.

performed before the Board in the above-referenced appeal. OWCP's decision on appeal was dated September 29, 2015 and the appeal was filed with the Board on February 12, 2016. The fee petition requests approval of services from February 11, 2016 through May 25, 2017 and documents of 9.70 total hours spent in connection with this appeal before the Board at \$475.00 per hour for 3.4 hours for Daniel M. Goodkin, Esq. and \$195.00 per hour for 1.9 hours for Paralegal Erika Bauer. The fee petition described the specific services provided for the amount claimed.

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*.¹⁰

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.”¹¹ Under 18 U.S.C. § 292, collecting a fee without the approval of the Board may constitute a misdemeanor, subject to fine or imprisonment up to one year, or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,985.50.

Issued: April 19, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *Supra* note 3.

¹¹ *Id.*