

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

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**In the Matter of D.V., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, TRAVIS  
AIR FORCE BASE, Employer**

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**Docket No. 16-1168  
Issued: December 11, 2017**

*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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a request for approval of an attorney fee in the amount of one thousand, two hundred, and eighty five dollars (\$1,285.00). The requested fee pertains to services performed before the Board in the above-referenced appeal.

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,<sup>1</sup> and under its *Rules of Procedure* found at 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;<sup>2</sup>
- (2) The nature and complexity of the appeal;<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8127.

<sup>2</sup> 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.

<sup>3</sup> 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.

- (3) The capacity in which the Representative has appeared;<sup>4</sup>
- (4) The actual time spent in connection with the Board appeal;<sup>5</sup> and
- (5) Customary local charges for similar services.<sup>6</sup>

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.<sup>7</sup> Appellant provided a signed statement indicating that the requested fee of \$1,285.00 was reasonable and appropriate and expressed her understanding that she was responsible for payment of the fee.

By decision dated September 13, 2016, the Board affirmed an April 5, 2016 decision of the Office of Workers' Compensation Programs (OWCP). The Board found that appellant did not establish that a merit review of her claim for an employment-related disability on or after April 4, 1993 was warranted.<sup>8</sup>

On appeal counsel submitted a six-page brief in support of his argument that OWCP improperly denied merit review. He noted the legal arguments made on reconsideration and asserted that OWCP did not properly consider the arguments and evidence. Counsel did not request oral argument before the Board.

The September 22, 2016 fee petition documents 3.00 hours spent in connection with the appeal before the Board including 2.5 hours for Daniel M. Goodkin, Esquire and .5 hours for Paralegal Jessica Pope. The fee petition describes the tasks carried out by counsel and a paralegal 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.

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. The Board, after review of the petition, concludes that the fee requested is reasonable.

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<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> 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.

<sup>7</sup> 20 C.F.R. § 501.9(e).

<sup>8</sup> In a prior appeal, the Board affirmed a November 14, 2014 OWCP decision finding that appellant had not established an employment-related disability for the period claimed. Docket No. 15-0402 (issued June 9, 2015).

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of one thousand, two hundred and eighty five dollars (\$1,285.00).

Issued: December 11, 2017  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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