

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

In the Matter of M.A., Appellant)
and) Docket No. 16-1687
U.S. POSTAL SERVICE, POST OFFICE,) Issued: December 15, 2017
Lodi, 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:

CHRISTOPHER J. GODFREY, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,438.50.¹ 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

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).

Pursuant to its regulation, 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. No response was received.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issues were whether the Office of Workers' Compensation Programs (OWCP) met its burden of proof to terminate appellant's compensation benefits on October 23, 2014, and whether appellant met her burden of proof to establish continuing employment-related disability or residuals after October 23, 2014. In a merit decision dated July 22, 2016, OWCP affirmed the termination of appellant's wage-loss compensation and medical benefits on October 23, 2014. By decision dated January 26, 2017, the Board affirmed the July 22, 2016 decision.

On appeal counsel had submitted a five-page brief addressing the factual and medical history of the case and presented Board precedent addressing the burden of proof regarding the termination of benefits. He argued that the medical evidence established that appellant's accepted conditions had not resolved and, at the least, a conflict in medical evidence had been created.

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 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.

On March 9, 2017 counsel provided a fee petition and statement of service.

OWCP's decision on appeal was dated July 22, 2016, and the appeal was filed with the Board on August 23, 2016. The Board issued its decision on January 26, 2017. The fee petition requests approval of time from August 9, 2016 through January 30, 2017 and documents 2.70 hours spent in connection with this appeal before the Board at \$475.00 an hour for Daniel M. Goodkin, Esq., on August 9 and 22, 2016, and January 30, 2017; and 0.80 hours at \$195.00 per hour for Paralegal Jessica Duncan on August 22 and September 6, 2016, and January 30, 2017. 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 \$1,438.50.

Issued: December 15, 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