

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

In the Matter of R.B., Appellant)	
)	
and)	Docket No. 17-1882
)	Issued: July 25, 2023
DEPARTMENT OF THE NAVY, MARINE)	
CORPS LOGISTICS, Barstow, 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:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$823.00.¹ 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 (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 these regulations, the Board must consider the petition under the following general 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 On June 4, 2018 the Clerk of the Board received a signed statement, dated May 22, 2018, in which appellant indicated that the requested fee of \$823.00 was reasonable and appropriate. Appellant expressed his understanding that he was responsible for payment of the fee.

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated August 29, 2017, a representative of the Office of Workers’ Compensation Programs (OWCP) Branch of Hearings and Review denied appellant’s claim for continuing wage-loss compensation commencing September 22, 2014, due to his accepted emotional conditions. By order dated April 17, 2018, the Board granted the Director of OWCP’s March 1, 2018 motion to remand, as the Director agreed that further development was required. Therefore, the Board set aside OWCP’s August 29, 2017 decision and remanded the case to OWCP for further development, including referral of appellant for a second opinion evaluation to

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.

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).

determine the nature and extent of any partial disability related to the accepted employment injury, and issuance of an appropriate decision.

On June 4, 2018 counsel filed a fee petition with the Board and a statement of services requesting approval of fees totaling \$823.00.

OWCP's decision on appeal was dated August 29, 2017 and the appeal was filed with the Board on September 1, 2017. The fee petition requests approval of services from September 1, 2017 through April 23, 2018 and documents 2.30 total hours spent in connection with this appeal before the Board. The services are listed as: \$475.00 per hour for 0.6 hours in 2017 and \$490.00 per hour for 0.7 hours in 2018 for Daniel M. Goodkin, Esq.; \$195.00 per hour for 0.1 hours for Paralegal Erika Bauer, and \$195.00 per hour for 0.9 hours for Paralegal Jessica Duncan. The fee petition described the specific services provided for the amounts claimed.

The Board has reviewed the fee petition and finds that 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 up to a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$823.00.

Issued: July 25, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board