

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

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In the Matter of A.S., Appellant)

and)

**U.S. POSTAL SERVICE, CAMILLA POST
OFFICE, Camilla, GA, Employer**)
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**Docket No. 19-1432
Issued: July 27, 2023**

Appearances:
Andrew Douglas, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING FEE PETITION

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$360.00.¹ 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 Act² (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

Under these regulations, the Board considered the 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 *Id.* at § 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, 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.⁹ No response was received.¹⁰

The requested fee pertains to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant met her burden of proof to establish entitlement to intermittent wage-loss compensation commencing December 23, 2017, causally related to her accepted August 29, 2017 employment injury. By decision dated September 20, 2018, OWCP denied appellant's claim for intermittent wage-loss compensation for the period commencing December 23, 2017. On December 13, 2018 appellant, through counsel, requested reconsideration. By decision dated March 12, 2019, OWCP denied modification of its September 20, 2018 decision. On April 5, 2019 appellant, through counsel, requested reconsideration. By decision dated May 17, 2019, OWCP denied modification of its March 12, 2019 decision.

On appeal, counsel submitted an eight-page brief supporting that appellant had met her burden of proof to establish entitlement to intermittent wage-loss compensation commencing December 23, 2017, causally related to her accepted August 29, 2017 employment injury. In this brief, counsel discussed medical reports of record, presented several legal citations, and made relevant contentions in support of appellant's appeal before the Board.

On August 24, 2020 counsel provided a fee petition requesting approval of fees totaling \$360.00.

OWCP's decision on appeal was dated May 17, 2019 and the appeal was filed with the Board on June 24, 2019. The fee petition requests approval of time from June 13, 2019 through

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 the FECA appeals.

⁹ 20 C.F.R. § 501.9(e).

¹⁰ 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.

June 24, 2019 and documents 1.44 hours spent in connection with this appeal before the Board at \$250.00 per hour for Andrew Douglas, Esq. The fee petition described the specific services provided for the amounts of time 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 19 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 \$360.00.

Issued: July 27, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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