

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

In the Matter of J.D., Appellant

and

**DEPARTMENT OF LABOR, EMPLOYMENT
& TRAINING ADMINISTRATION, Denver, CO,
Employer**

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**Docket No. 17-0143
Issued: March 18, 2024**

Appearances:

John S. Evangelisti, 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

Counsel for appellant has filed a fee petition in the amount of \$6,620.75.¹ 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).

Under these regulations, the Board considers fee petitions 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 October 23, 2017 the Clerk of the appellate Boards received appellant's letter disputing the amount of the fees charged.

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated July 20, 2017, the Board affirmed a July 15, 2015 decision of the Office of Workers' Compensation Programs (OWCP), finding that appellant had not established greater than nine percent right upper extremity permanent impairment, for which she previously received a schedule award.

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 20 C.F.R. § 501.9(e). The Board notes that included with the counsel's fee petition was a signed statement from appellant indicating that she found the requested fee to be reasonable and appropriate.

On appeal, counsel submitted a 12-page brief arguing that OWCP erred in ignoring the accepted condition of pectoralis minor syndrome and only rating the impairment of the lower plexus trunk.

OWCP's decision on appeal was dated May 10, 2016 and the appeal was filed with the Board on October 28, 2016. The fee petition requests approval of time from October 3, 2016 through April 3, 2017, and documents 21.95 hours spent in connection with this appeal before the Board at \$300.00 per hour for John S. Evangelisti, Esquire and \$175.00 per hour for Jodi Waldron, paralegal.

In this regard, however, the Board finds excessive billing while the appeal was pending before the Board. The Board will disallow the \$3,000.00 charged for revising the brief on February 3, 2017 as excessive and redundant.¹⁰

The Board has reviewed the fee petition and, after disallowing the requested fees totaling \$3,000.00, finds that the petition as modified, otherwise satisfies the requirements of section 501.9(e) of the Board's implementing regulations.

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 fee petition is granted in the amount of \$3,620.75.

Issued: March 18, 2024
Washington, DC

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

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

¹⁰ While not directly pertaining to claims under FECA, the Board finds instructive the decision of the United States Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In any fee petition, counsel must use billing judgement and exclude redundant or unnecessary hours and to confirm that the fee request is not excessive. Adequate documentation should be submitted to support the hours of work performed with specificity or a reasonably precise description of the work performed on behalf of the client.