

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

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**In the Matter of S.N., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS HEALTH ADMINISTRATION,  
Fresno, CA, Employer**

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**Docket No. 14-0352  
Issued: November 28, 2016**

*Appearances:*  
*Daniel M. Goodkin, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER GRANTING FEE PETITION**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,361.50.<sup>1</sup> 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>2</sup> (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).<sup>3</sup>

Pursuant to its regulations, the Board considers fee petitions under the following general criteria:

(1) The usefulness of the Representative's services;<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> *Id.* at § 8127.

<sup>3</sup> 20 C.F.R. § 501.9(e).

<sup>4</sup> 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;<sup>5</sup>
- (3) The capacity in which the Representative has appeared;<sup>6</sup>
- (4) The actual time spent in connection with the Board appeal;<sup>7</sup> and
- (5) Customary local charges for similar services.<sup>8</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>9</sup> No response was received.<sup>10</sup>

The requested fees pertain to services performed before the Board in the above-referenced appeal. By order dated August 1, 2014, the Board set aside OWCP decision dated June 17, 2013 which terminated appellant's medical and wage-loss benefits for the accepted condition of urinary incontinence. The Board noted that, following a March 22, 2012 OWCP decision that terminated appellant's benefits, counsel requested reconsideration and submitted additional medical evidence. In its June 17, 2013 decision, OWCP denied modification of the March 22, 2012 decision, but it did not consider one of the medical reports submitted by counsel. The Board remanded the case to OWCP to enable it to properly consider all the evidence submitted prior to the issuance of the June 17, 2013 decision.

On appeal counsel had submitted the Application for Review (AB-1 Form) and a six-page brief in which he had noted that OWCP erroneously relied upon the second opinion physician's report in terminating appellant's benefits for urinary incontinence. He argued that the second opinion was based on an inaccurate factual history and all physicians, including the second opinion physician, agreed that appellant's bladder stone removal was related to treatment for urinary incontinence.

On September 17, 2014 counsel submitted a fee petition. He submitted an itemized fee petition and the hourly charges for the individuals in the itemized statements. Counsel addressed the usefulness of his services noting that the case was complex. He also discussed his communication with appellant during the representation before the Board and addressed the customary local charges for similar services. Counsel specifically addressed the hourly rates

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<sup>5</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 representative must establish the complex or unusual nature of the appeal.

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> 20 C.F.R. § 501.9(e).

<sup>10</sup> 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.

charged by the staff of his law firm, noting that they had been found reasonable in other administrative tribunals.

OWCP's decision on appeal was dated June 17, 2013 and the appeal was filed with the Board on December 10, 2013. The fee petition requests approval of time from December 9, 2013 to August 18, 2014 and documents 4.5 hours spent in connection with this appeal before the Board at \$525.00 per hour for Steven E. Brown, Esquire, \$425.00 per hour for Daniel M. Goodkin, Esquire, and \$195.00 per hour for Paralegals Erika Bauer and Jessica Gordon.

In this regard, however, the Board finds excessive billing while the appeal was pending before the Board. In many cases, counsel included multiple billings by various staff members for "conference with attorneys (or w/attorney and paralegal) re: case status" or "review file for current status." In each of these meetings, which appear on the average of every six weeks, generally two attorneys and a paralegal are in attendance and bill for their time collectively. Each attendee's participation is described in the similar fashion. No rationale or justification for this redundant billing practice was offered. Absent a detailed explanation on how each particular conference, and each attendee, assisted appellant in furtherance of this appeal, the billed amounts for these status conferences are disallowed. The Board will disallow these 2.00 hours (December 18, 2013, January 21, February 21, March 19, April 16, May 21 and June 12, 2014) as excessive and redundant.<sup>11</sup>

Daniel Goodkin	.60@	\$425.00	\$ 255.00
Steven Brown	.70@	\$525.00	\$ 367.50
Erika Bauer	.30@	\$195.00	\$ 58.50
Jessica Gordon	.40@	\$195.00	<u>\$ 78.00</u>
Total:	2.00		\$ 759.00

The Board has carefully reviewed the fee petition and finds it, 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.

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<sup>11</sup> 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 judgment and exclude redundant or unnecessary hours and to confirm that the fee requested 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. See also *W.J., Order Granting Fee Petition*, Docket No. 08-2411 (issued August 25, 2014).

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$602.50.

Issued: November 28, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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