

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

In the Matter of R.V., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL SEA
SYSTEMS COMMAND, Panama City, FL,
Employer**

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**Docket No. 15-0159
Issued: December 8, 2017**

Appearances:
Robert E. O'Dell, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING FEE PETITION

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

Counsel for appellant filed a request for approval of attorney fees in the amount of \$1,625.00.¹ 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

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).

Under 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 By letter dated June 23, 2016, appellant confirmed that the \$1,625.00 fee for legal services was fair and reasonable and necessary in relation to his case.

The requested fee pertains to services performed before the Board in the above-referenced appeal. In the decision dated October 7, 2015, the Board set aside OWCP's May 1, 2014 decision finding that the case was not in posture for decision regarding whether appellant developed sensorineural hearing loss in the performance of duty. The Board remanded the case to OWCP to further develop the medical evidence.

On appeal counsel submitted a six-page brief addressing the issues on appeal. He cited many legal authorities in support of his arguments and identified and argued medical evidence to challenge OWCP's decision denying appellant's claim for sensorineural hearing loss.

Counsel filed a fee petition addressing the exact amounts that were being claimed for work before the Board, and provided an affidavit from appellant finding the fee reasonable. He addressed the usefulness of his services noting that he was successful in his argument as the Board had remanded OWCP's May 1, 2014 decision for further development. This subsequently resulted in a March 3, 2016 OWCP decision accepting the claim for bilateral sensorineural

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 charges" 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).

hearing loss, as well as a May 12, 2016 schedule award determination awarding nine percent permanent impairment of bilateral hearing loss. Counsel noted that appellant received compensation benefits in the amount of \$21,049.56 as a result of his representation. He discussed his communication with appellant during his representation before the Board and addressed the customary local charges for similar services. Counsel provided a time and expense statement which specifically addressed the hourly rates charged by him during his representation.

OWCP's decision on appeal was dated May 1, 2014. The appeal before the Board was filed on October 23, 2014 and a supporting brief was filed with the Board on December 24, 2014. The fee petition requested approval of time from October 23, 2014 through November 6, 2015 and documents 6.50 hours spent in connection with this appeal before the Board at \$250.00 per hour for Robert E. O'Dell, Esquire for a total of \$1,625.00.

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."¹⁰

IT IS HEREBY ORDERED THAT that the fee petition is granted in the amount of \$1,625.00.

Issued: December 8, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ James A. Haynes, Alternate Judge, participated in the preparation of this order, but was no longer a member of the Board effective November 16, 2015.