

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

In the Matter of I.D., Appellant)	
)	
and)	Docket No. 16-0581
)	Issued: December 13, 2017
U.S. POSTAL SERVICE, POST OFFICE, Georgetown, TX, 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:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$2,675.00.¹ 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 and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

Pursuant to its regulation, the Board considered the fee 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 5 U.S.C. § 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 by the representative 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. No response was received.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant had established an emotional condition in the performance of duty. In a decision dated December 2, 2015, OWCP denied her emotional condition claim as it found that she had not established a compensable factor of employment. By decision dated December 12, 2016, the Board set aside the December 2, 2015 decision after finding that appellant had established compensable employment factors. It remanded the case for OWCP to evaluate the medical evidence.

On appeal counsel submitted a six-page brief in support of his argument that OWCP erred in denying appellant's emotional condition claim. He asserted that she had established sexual harassment by a supervisor and error or abuse by the employing establishment, citing Board case law and decisions by the Merit Systems Protection Board.

On January 4, 2017 counsel filed a fee petition describing the services performed on behalf of appellant before the Board, the time spent on the services, and the exact amount claimed.

OWCP's decision on appeal was dated December 2, 2015 and the appeal was filed with the Board on February 8, 2016. The fee petition requests approval of time from December 15, 2015 through December 12, 2016 and documents 6.80 hours spent in connection with this appeal before the Board. This is comprised of: .60 hours at \$475.00 per hour for Daniel M. Goodkin, Esquire, for a total of \$285.00; 3.70 hours at \$425.00 per hour for Mr. Goodkin for a total of \$1,572.50; 1.0 hour at \$525.00 per hour for Steven E. Brown, Esquire for a total of \$525.00; .20

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 a representative's 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 counsel 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 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.

hours at \$195.00 per hour for Erika Bauer, paralegal, for a total of \$39.00; and 1.3 hours at \$195.00 per hour for Jessica Pope, paralegal, for a total of \$253.50.

The Board has carefully 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.¹⁰

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 sum of \$2,675.00.¹¹

Issued: December 13, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

¹⁰ The Board notes that the fee agreement should always be provided to the Board when filing a fee petition.

¹¹ Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.