

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

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**In the Matter of H.C., Appellant**

**and**

**DEPARTMENT OF AGRICULTURE, FOREST  
SERVICE, SANTA FE NATIONAL FOREST,  
Cuba, NM, Employer**

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**Docket No. 16-0937  
Issued: December 7, 2017**

*Appearances:*  
*Daniel 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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$503.00.<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> 5 U.S.C. § 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>

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was a claim for the permanent partial impairment appellant's lower extremities. By decisions dated March 14 and 16, 2016, OWCP granted appellant schedule awards for three percent permanent impairment of each of his legs. The Board affirmed the March 14 and 16, 2016 OWCP decisions.

On appeal, counsel submitted a two-page brief presenting a factual pattern and Board precedent in similar cases. He argued that Board precedent supported finding that appellant had more than three percent permanent impairment of his lower extremities.

OWCP's decisions on appeal were dated March 14 and 16, 2016 and the appeal was filed with the Board on April 4, 2016. The fee petition requests approval of time on April 4, 2016 and documents 1.4 hours spent in connection with this appeal before the Board at \$425.00 per hour for one hour for Daniel M. Goodkin, Esquire, and \$195.00 per hour and \$78.00 for 0.40 hours for Paralegal Erika Bauer.

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 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>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). The Board notes that included with the counsel's fee petition was a signed statement from appellant indicating that he found the requested fee to be reasonable and appropriate.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$503.00.

Issued: December 7, 2017  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
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