

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

_____)	
In the Matter of K.V., widow of K.L., Appellant)	
)	
and)	Docket No. 16-1610
)	Issued: July 9, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Kansas City, MO, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

Counsel for appellant has filed a fee petition in the amount of \$996.50.¹ 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 FECA² and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

¹ Federal Employees' Compensation Act (FECA) (5 U.S.C. § 8127(b)) and its implementing regulation (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 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 On August 1, 2017 the Clerk of the Appellate Boards received a signed statement in which appellant indicated that the requested fee of \$996.50 was reasonable and appropriate. Appellant expressed her understanding that she was responsible for payment of the fee.

The requested fees pertain to services performed before the Board in the above-referenced appeal. In a July 6, 2016 decision, the Office of Workers' Compensation Programs (OWCP) found that appellant had not met her burden of proof to establish that the employee's death on November 24, 2013 was causally related to factors of his federal employment. In a July 22, 2016 decision, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). By decision dated July 3, 2017, the Board affirmed OWCP's July 6 and 22, 2016 decisions.

On appeal counsel submitted a five-page brief containing supporting legal citation for the argument that employee's death on November 24, 2013 was causally related to factors of his federal employment. Counsel did not request oral argument before the Board.

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).

On August 1, 2017 counsel provided a fee petition and a statement of service, requesting approval of fees totaling \$996.50, which addressed the general criteria found at 20 C.F.R. § 501.9(e). Counsel provided a detailed account of the specific legal tasks he and a paralegal performed and specifically addressed the hourly rates they charged.

The requested fees pertain to services performed before the Board in the above-referenced appeal. OWCP's decisions on appeal were dated July 6 and 22, 2016 and the appeal was filed with the Board on August 4, 2016. The fee petition requests approval of services from August 4, 2016 through July 11, 2017 and documents 3.10 hours spent in connection with this appeal before the Board at \$475.00 per hour for 1.40 hours for Daniel M. Goodkin, Esq., and \$195.00 per hour for 1.70 hours for Paralegal Erika Bauer. The fee petition described the specific services provided for the amounts of time claimed.

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.

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 up to a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$996.50.¹⁰

Issued: July 9, 2018
Washington, DC

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

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

¹⁰ Colleen D. Kiko, Judge, participated in the in the original decision, but was no longer a member of the Board effective December 11, 2017 and did not participate in the preparation of this order.