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

In the Matter of P.C., Appellant	)
in the Natter of 1.0., Appendix	)
and	) Docket No. 16-1714 ) Issued: February 3, 2020
DEPARTMENT OF LABOR, EMPLOYEE BENEFITS SECURITY ADMINISTRATION,	) issued. February 3, 2020
Philadelphia, PA, Employer	)
Appearances:  Michael E. Overman, 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 VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,856.75.<sup>1</sup> The Board notes that all petitions for approval of fees for a 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 must consider the petition under the following general criteria:

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

<sup>&</sup>lt;sup>1</sup> 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.

<sup>&</sup>lt;sup>2</sup> 5 U.S.C. § 8127.

<sup>&</sup>lt;sup>3</sup> 20 C.F.R. § 501.9(e).

<sup>&</sup>lt;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>

The fee petition contains an itemized statement setting forth a description of the work performed on appeal, the time and hourly rate for each charge, and the total balance of fees in the amount of \$1,062.75. 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. As an attachment to the fee petition is an acknowledgement, signed by appellant on April 7, 2019, that she consented to payment of a fee in the amount of \$1,062.75.

The Board has carefully reviewed the fee petition, and finds that it satisfies the requirements of section 501.9(e) of the Board's *Rules of Procedure*.<sup>10</sup> However, the Board finds that the fee shall be granted in the amount of \$1,062.75 as that amount is consistent with the petition's itemized statement and has been acknowledged by appellant as the amount owed. The petition does not support a fee in the amount of \$1,856.75, as requested, as the petition does not contain a basis for claiming an additional \$794.00 fee.

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 one year, or both.

<sup>&</sup>lt;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>&</sup>lt;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>&</sup>lt;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>&</sup>lt;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>&</sup>lt;sup>9</sup> 20 C.F.R. § 501.9(e).

<sup>&</sup>lt;sup>10</sup> Supra note 3.

<sup>&</sup>lt;sup>11</sup> *Id*.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of  $\$1,062.75.^{12}$ 

Issued: February 3, 2020

Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge Employees' Compensation Appeals Board

 $<sup>^{12}</sup>$  Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.