

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

In the Matter of K.B., Appellant

and

**DEPARTMENT OF THE ARMY, FORT
LEONARD WOOD, Nixa, MO, Employer**

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**Docket No. 17-0184
Issued: January 3, 2020**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$1,400.00.¹ 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 (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).³

The Board has considered this 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 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).

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.

- (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 No response was received.¹⁰

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decisions dated May 24 and October 21, 2016, the Office of Workers' Compensation Programs (OWCP) found that appellant had not met her burden of proof to establish an emotional condition and aggravation of a preexisting chronic fatigue syndrome condition due to factors of her employment while in the performance of duty. On November 3, 2016 appellant, through counsel, appealed to the Board. Counsel submitted a four-page brief containing supporting legal citations for the argument that appellant had established an emotional condition and aggravation of preexisting chronic fatigue syndrome causally related to factors of her federal employment. By decision dated January 19, 2018, the Board set aside OWCP's May 24 and October 21, 2016 decisions and remanded the case for further development, to be followed by a *de novo* decision regarding appellant's claim for employment-related conditions.

The fee petition requests approval of services from November 1, 2016 to January 19, 2018 and documents 5.60 hours spent in connection with this appeal before the Board at \$475.00 per hour for 1.10 hours by Daniel M. Goodkin, Esq., and \$195.00 per hour for 4.50 hours by Paralegal Erika Bauer. The fee petition describes 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.

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 FECA appeals.

⁹ 20 C.F.R. § 501.9(e).

¹⁰ The Board notes that included with counsel's fee petition was a signed statement from appellant indicating that the requested fee of \$1,400.00 was reasonable and appropriate. Appellant expressed her understanding that she was responsible for payment of the 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 a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,400.00.

Issued: January 3, 2020
Washington, DC

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

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

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