

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

In the Matter of R.R., Appellant)	
)	
and)	Docket No. 15-0129
)	Issued: August 29, 2016
)	
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, Employer)	
)	
)	

Appearances:
Gregory A. Hall, 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
JAMES A. HAYNES, Alternate Judge

Counsel for appellant has filed a fee petition in the amount of \$4,620.00.¹ 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

Pursuant to its regulations, the Board must consider the petition under the following general 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, 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 decision dated August 7, 2013, the Office of Workers' Compensation Programs (OWCP) found that appellant's actual part-time earnings as a modified letter carrier beginning July 22, 2004 fairly and reasonably represented his wage-earning capacity. In a May 1, 2014 decision, it affirmed its August 7, 2013 wage-earning capacity determination. By decision dated December 28, 2015, the Board reversed OWCP's May 1, 2014 decision and remanded the case for further action. The Board noted that OWCP procedures in effect at the time of its original wage-earning capacity determination prohibited a wage-earning determination based on part-time reemployment where the claimant was a full-time worker at the time of injury. The Board found that, under the circumstances of the present case, OWCP could not retroactively apply OWCP procedures promulgated in 2013 to determine appellant's wage-earning capacity effective July 22, 2004.¹¹

On appeal counsel submitted a 10-page brief presenting the statutory and regulatory standards for wage-earning capacity cases and offered Board precedent in similar cases. He argued that the May 1, 2014 wage-earning capacity determination of OWCP was improper because OWCP based appellant's wage-earning capacity on actual wages from a part-time, modified position, despite the fact that his date of injury position was a full-time position. Counsel also argued that the actual wages from the part-time, modified position do not provide a

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).

¹⁰ The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that he agreed with the requested fee for services rendered.

¹¹ The Board remanded the case to OWCP for a proper adjudication of appellant's claim for wage-loss compensation.

proper basis for evaluating appellant's wage-earning capacity for the additional reason that the position was makeshift in nature.

On March 24, 2016 counsel provided a fee petition addressing the general criteria found at 20 C.F.R. § 501.9(e). Counsel addressed the usefulness of his services by noting that the case was complex and that he was successful in his argument as the Board had reversed OWCP's May 1, 2014 decision and remanded the case to OWCP for further action. He also discussed his communication with appellant during the representation before the Board and addressed the customary local charges for similar services. Counsel provided a detailed account of the specific legal tasks he performed and specifically addressed the hourly rate he charged, noting that it had been found reasonable in other administrative tribunals.

OWCP's decision on appeal was dated May 1, 2014 and the appeal was filed with the Board on October 25, 2014. The fee petition requests approval of time from October 11 through 27, 2014 and documents 23.1 hours spent in connection with this appeal before the Board at \$200.00 per hour for Gregory A. Hall, Esq.

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 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 for up to a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$4,620.00.¹²

Issued: August 29, 2016
Washington, DC

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

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

¹² James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015 and did not participate in the preparation of this order.