

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

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In the Matter of M.M., Appellant)	
)	
and)	
)	Docket Nos. 15-0607 &
U.S. POSTAL SERVICE, LOGISTICS &)	16-1110
DISTRIBUTION CENTER, Kearny, NJ,)	Issued: January 7, 2020
Employer)	
_____)	

Appearances:
Thomas R. Uliase, 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 \$1,856.75.¹ The petition covered services performed from January 16 to 27, 2015 in relation to Docket No. 15-0607 and April 11 to May 9, 2016 in relation to Docket No. 16-1110.² 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 Act³ (FECA) and under its *Rules of Procedure* found at 20 C.F.R. § 501.9(e).⁴

¹ FECA (5 U.S.C. § 8127(b)) and the 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 The petition included appellant's December 28, 2017 signed acknowledgement that she reviewed the bill totaling \$1,856.75. Appellant also indicated that the fee was acceptable and that she was satisfied with the representation provided.

³ 5 U.S.C. § 8127.

⁴ 20 C.F.R. § 501.9(e).

Pursuant to its regulations, the Board has considered the fee petition under the following criteria:

- (1) The usefulness of the Representative's services;⁵
- (2) The nature and complexity of the appeal;⁶
- (3) The capacity in which the Representative has appeared;⁷
- (4) The actual time spent in connection with the Board appeal;⁸ and
- (5) Customary local charges for similar services.⁹

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.¹⁰

The requested fees pertain to services performed before the Board in the above-referenced appeals.

With respect to the appeal under Docket No. 15-0607, by decisions dated August 5 and November 7, 2014 the Office of Workers' Compensation Programs (OWCP) denied appellant's claim. Appellant, through counsel, appealed to the Board on January 27, 2015. On appeal counsel submitted a seven-page brief arguing that the medical evidence of record established causal relationship. In the alternative, he argued that appellant had at least established a *prima facie* case of entitlement to FECA benefits, thereby warranting further medical development by OWCP. In his brief, counsel identified various medical reports and diagnostic studies he believed satisfied appellant's burden of proof on causal relationship. By decision dated May 15, 2015, the Board affirmed OWCP's August 5 and November 7, 2014 decisions, finding that appellant had not met her burden of proof to establish that her cervical, lumbar, and bilateral shoulder conditions were causally related to factors of her federal employment.¹¹ Counsel subsequently submitted a fee

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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).

⁹ 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.

¹⁰ 20 C.F.R. § 501.9(e); *see supra* note 2.

¹¹ Docket No. 15-0607 (issued May 15, 2015).

petition requesting approval of fees for services performed from January 16 to 27, 2015, documenting 3.92 hours spent in connection with this appeal, for a total of \$1,187.75. Counsel billed his services (2.75 hours) at a rate of \$400.00 per hour. Additionally, Alisha M. Flynn, a paralegal, billed her services (1.17 hours) at \$150.00 per hour. A substantial portion of the time billed (3.5 hours) was devoted to reviewing and analyzing appellant's claim file and preparing the seven-page brief. 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. Although appellant did not prevail on appeal, the Board recognizes both the usefulness of counsel's services and the nature and complexity of the appeal. Accordingly, the Board concludes that the \$1,187.75 fee requested with respect to Docket No. 15-0607 is reasonable.

With respect to the appeal under Docket No. 16-1110, by decision dated January 25, 2016, OWCP continued to deny appellant's occupational disease claim based on her failure to establish causal relationship. Appellant, through counsel, appealed to the Board on May 2, 2016. Counsel submitted another seven-page brief arguing that medical evidence obtained since OWCP's prior merit decision was sufficient to establish causal relationship. By decision dated November 9, 2016, the Board set aside OWCP's last merit decision and remanded the case for further development.¹² Counsel subsequently submitted a fee petition requesting approval of fees in the amount of \$669.00 for a total of 2.42 hours of services performed from April 11 to May 9, 2016. He billed 1.5 hours at a rate of \$400.00 per hour, and his assistant, Cheryl A. Leonardo, billed 0.92 hours at a rate of \$75.00 per hour. A substantial portion of the billed time (2 hours) was devoted to reviewing and analyzing the case file and preparing the seven-page brief. The Board has carefully reviewed the fee petition with respect to Docket No. 16-1110, and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulations. It is noteworthy that counsel prevailed on appeal, and on remand OWCP ultimately accepted appellant's occupational disease claim. The Board concludes that the \$669.00 fee 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.

¹² Docket No. 16-1110 (issued November 9, 2016).

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,856.75.¹³

Issued: January 7, 2020
Washington, DC

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

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

¹³ Colleen Duffy Kiko, Judge, participated in the original decisions, but was no longer a member of the Board effective December 11, 2017.