

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

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In the Matter of T.D., Appellant)	
)	
and)	Docket No. 16-1397
)	Issued: December 20, 2017
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Richmond, VA, Employer)	
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<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Daniel M. Goodkin, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

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 \$1,067.00.¹ The Board notes that all petitions for approval of fees for representative’s services are considered under the Board’ 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 considered the 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 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 *Id.* at § 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 by the representative 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.

The requested fee pertains to services performed before the Board in the above-referenced appeal. The underlying issue is whether OWCP properly denied appellant's emotional condition claim as he failed to establish a compensable factor of employment. In a decision dated June 8, 2016, an OWCP hearing representative affirmed the August 26, 2015 decision denying appellant's traumatic injury claim for an emotional condition.

On appeal counsel submitted a five-page brief in support of the claim. Counsel asserted that appellant had established a compensable factor of employment, and accordingly, OWCP should have considered the medical evidence. He cited Board precedent in support of his arguments on appeal.

On December 19, 2016 counsel submitted a fee petition describing the services performed on behalf of appellant before the Board, the time spent on the services, and the exact amount claimed.

By order dated December 20, 2016, the Board dismissed appellant's appeal of the June 8, 2016 OWCP decision after it received counsel's request to withdraw the appeal on October 25, 2016.¹⁰

OWCP's decision on appeal was dated June 8, 2016 and the appeal was filed with the Board on June 27, 2016. The fee petition requests approval of the time from June 17 through October 25, 2016 and documents 2.80 hours spent in connection with this appeal before the

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 an representative appears includes, but is not limited to, whether the representative obtained a written retainer and fee agreement.

⁷ The Board's evaluation of a representative's 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 counsel 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 representative 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 in the letter dated October 25, 2016, counsel requested withdrawal of the appeal because appellant passed away on October 12, 2016.

Board at \$475.00 per hour for 2.0 hours for Daniel M. Goodkin, Esquire for a total of \$950.00 and \$195.00 for .60 hours for Jessica Pope, paralegal for a total of \$117.00.

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 regulation. 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 sum of \$1,067.00.¹¹

Issued: December 20, 2017
Washington, DC

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

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

¹¹ Colleen Duffy Kiko, Judge, participated in the preparation of this order, but was no longer a member of the Board effective December 11, 2017.