

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

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**In the Matter of M.W., Appellant**

**and**

**DEPARTMENT OF AGRICULTURE, SWAN  
LAKE RANGER STATION, Bigfolk, MT,  
Employer**

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**Docket No. 17-1205  
Issued: January 3, 2020**

*Appearances:*

*Michael D. 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

Counsel 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 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>

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<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>2</sup> *Id.* at § 8127.

<sup>3</sup> 20 C.F.R. § 501.9(e).

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

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

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.<sup>9</sup> No response was received.<sup>10</sup>

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether OWCP had met its burden of proof to terminate appellant's wage-loss compensation, effective June 2, 2016. Appellant appealed OWCP's November 22, 2016 termination decision to the Board on May 11, 2017. By decision dated April 26, 2018, the Board reversed OWCP's November 22, 2016 termination decision.

On July 25, 2018 counsel provided a fee petition requesting approval of fees totaling \$1,856.75. The attached invoice details legal services performed from May 12 to 15, 2017. The invoice specifies 3.5 hours at \$300.00 per hour for Michael D. Overman, Esq., and 4.17 hours at \$150.00 per hour for Paralegal Alisha M. Flynn. However, this accounts only for a total of \$1,675.50.

The Board has carefully reviewed the fee petition and finds that it, as modified, satisfies the requirements of 20 C.F.R. § 501.9(e). The fee petition describes the specific services provided,

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<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.

<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>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>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>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 FECA appeals.

<sup>9</sup> 20 C.F.R. § 501.9(e).

<sup>10</sup> The Board notes that included with the representative's fee petition was a signed statement of appellant, dated July 17, 2018, indicating her consent to a fee in the amount of \$1,675.50.

the time spent performing those services, and the resulting fee in the amount of \$1,675.50. The Board will therefore approve the fee in the amount of \$1,675.50.

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 \$1,675.50.

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