

- (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 September 22, 2015, the Office of Workers' Compensation Programs (OWCP) found that appellant had not met her burden of proof to establish a stress-related condition in the performance of duty. By decision dated August 18, 2017, the Board affirmed the decision of OWCP. By order dated June 12, 2018, the Board denied appellant's petition for reconsideration.

On June 19, 2018 counsel provided a fee petition and a statement of service requesting approval of fees totaling \$2,717.50.

The fee petition requests approval of time from September 15, 2017 through June 18, 2018 and documents 7.6 hours spent in connection with this appeal before the Board at \$475.00 per hour for 1.8 hours for Daniel Goodkin, Esq., 2.5 hours at \$550.00 per hour for Steven Brown, Esq., and 2.5 hours at \$195.00 per hour for Paralegal Jessica Duncan. Additionally, 0.8 hours of time were not charged. The fee petition described the specific services provided for the amount claimed.

On July 11, 2018, the Clerk of the Appellate Boards sent a letter of correspondence to appellant and provided a copy of the application for approval of an attorney's fee. It noted that she was afforded an opportunity to comment upon the requested fee in the amount of \$2,717.50. Appellant was afforded 30 days, until August 10, 2018 to respond to the Board. She did not file a response with the Clerk of the Boards. However, the Board notes that correspondence was received by the Clerk of the Appellate Boards on July 19, 2018. The correspondence states,

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 Statement of Service and Fee Approval that contained a line for Appellant's signature, to indicate her approval of the requested fee, but Appellant did not sign.

“Appellant has not had a chance to thoroughly review the approval for attorney fee request but there should be no fees requested. This was discussed between she and the firm back in January 2018, per the following e-mail excerpts.” Attachments to the July 19, 2018 correspondence noted that appellant exchanged e-mails on January 9, 2018 with counsel’s office and his firm personnel noting disagreement with several billing practices for the firm’s work before the Board. The e-mails further suggest a breakdown in the attorney client relationship.

The Board, having considered the fee petition and supporting documentation, denies the fee petition. The Board finds that the petition provides insufficient information to allow approval of any portion of the amount claimed. The Board notes the following defects:

- (1) Counsel provided the typical statement of service and fee approval dated June 19, 2018, but did not obtain appellant’s signature indicating her approval of the requested fee. This absence of a signature is unusual and indicates that appellant did not approve of the fee.
- (2) Counsel provided several e-mails detailing appellant’s dissatisfaction with the cost of her counsel’s representation, including notations as to several specific billing practices she found unreasonable. Again, the July 19, 2018 correspondence notes “... there should be no fees requested.” Under the third factor considered by the Board, the capacity of services, the Board must consider that appellant has at least had a chance to thoroughly review the fee request.
- (3) A member of the firm’s statement that “no fees should be requested” indicates that counsel is not seeking attorney’s fees or fees on behalf of the firm. This ambiguity must be cured.

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 in the amount of \$2,717.50 is denied.¹¹

Issued: February 3, 2020
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹¹ Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017 and did not participate in the preparation of this order.