



- (2) The nature and complexity of the appeal;<sup>4</sup>
- (3) The capacity in which the Representative has appeared;<sup>5</sup>
- (4) The actual time spent in connection with the Board appeal;<sup>6</sup> and
- (5) Customary local charges for similar services.<sup>7</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>8</sup> No response was received.<sup>9</sup>

The requested fees pertain to services performed before the Board in the above-referenced appeal. The Office of Workers' Compensation Programs (OWCP) accepted appellant's occupational disease claim for major depression -- recurrent. The issue on appeal was whether appellant established that he was totally disabled due to his employment-related major depression. By decision dated November 4, 2016, the Board affirmed OWCP's April 28, 2016 decision denying wage-loss compensation. The Board found that the medical evidence of record was insufficient to establish employment-related disability for the claimed period.

In support of the appeal, appellant's representative submitted a three-page brief dated May 10, 2016 in which he set forth the facts and argued legal precedent relevant to the issue before the Board. As noted, the Board affirmed OWCP's denial of wage-loss compensation for the claimed period.

On December 7, 2016, appellant's representative provided a fee petition and statement of service requesting approval of fees totaling \$784.50 for the period May 10 through November 7, 2016. The petition documents 2.30 hours spent in connection with the appeal before the Board at \$475.00 an hour for 1.20 hours for Daniel M. Goodkin, Esquire, for a total of \$570.00 and \$195.00 per hour for .90 hours for Paralegal Jessica Pope for a total of \$175.50 and .20 hours for Paralegal Erika Bauer for a total of \$39.00. The fee petition described the specific services provided for the amount claimed.

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<sup>4</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>5</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>6</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>7</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 the FECA appeals.

<sup>8</sup> 20 C.F.R. § 501.9(e).

<sup>9</sup> The fee petition was accompanied by a December 3, 2016 signed statement from appellant expressing her belief that the fees charged by counsel were reasonable and appropriate.

The Board has carefully reviewed the fee petition, and finds the petition satisfies the requirements of section 501.9(e) of the Board's implementing regulations.<sup>10</sup>

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 \$784.50.<sup>11</sup>

Issued: December 13, 2017  
Washington, DC

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

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

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<sup>10</sup> *Supra* note 6.

<sup>11</sup> Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.