



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 properly denied wage-loss compensation from December 10, 2012 to February 1, 2015 because the employee had not filed a claim for disability during his lifetime.

In merit decisions dated April 27 and August 19, 2016, OWCP found that the employee's estate was not entitled to compensation for the period December 10, 2012 to February 1, 2015 because it could not accept a posthumous claim for disability. By decision dated February 2, 2017, the Board set aside the April 27 and August 19, 2016 decisions. The Board found that OWCP erred in failing to adjudicate appellant's claim for disability on behalf of the employee as the employee had timely filed a claim for a traumatic injury within his lifetime and thus the right

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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 the 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 from appellant dated February 17, 2017 indicating that he agreed with the requested fee for services rendered.

to file a claim for disability compensation continued after his death. The Board remanded the case for OWCP to consider the merits of the claim.

On appeal counsel submitted a two-page brief citing Board case law and the applicable regulation addressing the issue of posthumous claims for disability. Counsel also submitted, in response to the Board's request, a letter of administration from the state identifying appellant as administrator of the employee's estate.

Counsel, on February 27, 2017, 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.

OWCP's decisions on appeal were dated April 27 and August 19, 2016 and the appeal was filed with the Board on August 25, 2016. The fee petition requests approval of time from August 25, 2016 through February 10, 2017 and documents 3.20 hours spent in connection with this appeal before the Board at \$475.00 per hour for .50 hours for Daniel M. Goodkin, Esquire for a total of \$237.50, \$550.00 per hour for .10 hours for Steven E. Brown, Esquire, for a total of \$55.00, and \$195.00 per hour for 2.60 hours for Erika Bauer, paralegal for a total of \$507.00.

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 19 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 \$799.50.<sup>11</sup>

Issued: December 14, 2017  
Washington, DC

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

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

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