

- (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 two above-referenced appeals.¹¹ By decision dated May 30, 2012, the Office of Workers' Compensation Programs (OWCP) denied appellant's claim for a recurrence of total disability on or after February 24, 2010 as appellant had not met his burden of proof to establish causal relationship. On November 16, 2012 counsel filed a timely appeal from OWCP's May 30, 2012 decision. By decision dated October 24, 2013, the Board affirmed OWCP's May 30, 2012 decision finding that appellant had not met his burden of proof to establish an employment-related recurrence of disability.¹²

Upon return of the case record, OWCP developed appellant's claim for compensation for the period August 22, 2010 to February 24, 2014. By decision dated April 21, 2016, it found that the medical evidence of record was insufficient to establish a recurrence of total disability from work for the period August 22, 2010 to February 24, 2014 causally related to the February 23, 2009 accepted employment conditions. Counsel appealed to the Board on October 14, 2016. By decision dated June 22, 2018, the Board set aside the April 21, 2016 decision and remanded the case to OWCP for further development of the record as to the extent and degree of employment-

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, however, that included with the representative's fee petition was a signed statement from appellant dated January 4, 2017 indicating that he agreed with the requested fee of \$10,050.00. Appellant expressed his understanding that he was responsible for payment of the fee.

¹¹ Although the fee petition only specifically references Docket No. 17-0035, as discussed *infra*, it appears to also seek approval of fees for services performed in relation to Docket No. 13-0266.

¹² Docket No. 13-0266 (issued October 24, 2013).

related disability, especially with regard to the expansion of the accepted conditions to include dysthymic disorder.¹³

On January 4, 2017 counsel provided a fee petition requesting approval of fees totaling \$10,050.00, which consisted of the following: \$5,375.00 for 21.5 hours at \$250.00 per hour for the period June 16, 2010 to December 4, 2012; \$3,550.00 for 14.20 hours at \$250.00 per hour for the period October 26, 2015 to February 9, 2016; and \$1,125.00 for 4.50 hours at \$250.00 per hour for the period April 27 to October 12, 2016.

The Board has carefully reviewed the fee petition, and finds that it does not satisfy the requirements of section 501.9(e) of the Board's regulations. The fee petition covers services provided in two separate appeals before the Board and does not provide a sufficiently detailed reporting of the particular services performed in connection with each appeal. The fee petition also fees pertaining to both Board and OWCP matters. The Board finds it difficult to ascertain the services for which fees are being charged when the document presented for approval includes fees for services before both OWCP and the Board.¹⁴ The Board further notes that counsel has attached a copy of a January 23, 2017 OWCP decision approving a fee in the amount of \$10,050.00, which is the same amount that counsel is now claiming before this Board.

In light of the foregoing ambiguities, the fee petition must be denied.

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.

¹³ Docket No. 17-0035 (issued June 22, 2018).

¹⁴ For example, services listed for the period June 16, 2010 to December 4, 2012, and January 17, 2013 to February 9, 2016 may fall within this category.

IT IS HEREBY ORDERED THAT the fee petition in the amount of \$10,050.00 is denied and may be resubmitted to the Board within 60 days of the date of this order.¹⁵

Issued: January 16, 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

¹⁵ The Board notes that any updated fee petition produced by counsel should be filed separately under each of the two docket files, *i.e.*, Docket No. 13-0266 and Docket No. 17-0035, and designate for each appeal the particular fees requested.