



- (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 regulation, 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. By decision dated September 5, 2013, the Office of Workers' Compensation Programs (OWCP) terminated appellant's wage-loss and entitlement to schedule award compensation benefits effective that date as she refused an offer of suitable work, pursuant to 5 U.S.C. § 8106(c). By decision dated June 24, 2014, the Board affirmed the September 5, 2013 OWCP decision.

On appeal counsel submitted a two-page letter which presented Board precedent and FECA's implementing regulation regarding the procedural requirements for terminating an employee's compensation for failure to accept suitable work. She argued that OWCP's termination decision should be reversed and appellant's compensation should be reinstated with back pay as OWCP had failed to issue a 15-day notice allowing her a second chance to accept the employing establishment's July 26, 2013 job offer. Counsel also argued that appellant's decision to retire on disability was a valid reason for her refusal to accept the offered job.

Counsel provided a handwritten fee petition and a letter requesting approval of fees totaling \$1,328.00.

OWCP's decision on appeal was dated September 5, 2013 and the appeal was filed with the Board on December 20, 2013. The fee petition requests approval of time from October 21, 2013 through June 30, 2014, and documents 4.6 hours spent in connection with this appeal

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<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 counsel's fee petition was a signed statement from appellant indicating that she found the requested fee to be reasonable and appropriate.

before the Board at \$300.00 per hour for Deborah G. Helprin, Esquire.<sup>11</sup> The fee petition described the specific services provided for the amount claimed and generally addressed the usefulness of her services.

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 regulations.

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 \$1,328.00.<sup>12</sup>

Issued: December 7, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> The Board notes that 4.6 hours times \$300.00 equals \$1,380.00. Counsel reduced this amount to \$1,328.00 without explanation.

<sup>12</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015 and did not participate in the preparation of this order.