



- (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.

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated January 15, 2016, the Board affirmed OWCP's April 18, 2014 decision (1) denying modification of its termination of appellant's compensation benefits effective March 2, 2012 as she no longer had any residuals or disability causally related to her accepted employment injuries, (2) finding that appellant had not established any continuing residuals or disability from her accepted employment injuries on or after March 2, 2012, and (3) denying acceptance of a back injury as a consequence of her accepted work injuries.

On appeal counsel had submitted an Application for Review (AB-1 Form) and a 12-page brief addressing the factual history of the case and arguing that the medical opinions of appellant's treating physicians were sufficient to establish that appellant had sustained a work-related back injury and citing relevant case law.

OWCP's decision on appeal was dated April 18, 2014 and the appeal and supporting AB-1 Form and brief were filed with the Board on October 15, 2014. The fee petition requests approval of time from June 5, 2014 through January 21, 2016 and documents 6.49 hours spent in connection with this appeal before the Board at \$350.00 per hour for time spent outside court and \$400.00 per hour for time spent at a court proceeding for counsel. Counsel advised that, in view of the Board's decision, he requested approval only of an attorney's fee of \$700.00 for services rendered in drafting and filing the appeal.

---

<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).

It is noted that the fee agreement signed by appellant did not reference work before the Board. In the future, such fee agreements should be specific as to the forum, the state where counsel is retained, hourly rates, and the specific legal work performed.

The Board has carefully reviewed the fee petition and finds it satisfies the requirements of section 501.9(e) of the Board's implementing regulations. 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 \$700.00.

Issued: August 11, 2016  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board