

Pursuant to its regulation, the Board considered the fee petition under the following criteria:

- (1) The usefulness of the Representative's services;⁴
- (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. No response was received.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying merit issue was whether OWCP met its burden of proof to terminate appellant's wage-loss compensation. By decision dated February 14, 2013 OWCP terminated appellant's wage-loss compensation effective March 10, 2013. A hearing representative with OWCP's Branch of Hearings and Review affirmed the termination on September 10, 2013. In a June 18, 2014 decision, the Board found that OWCP had properly terminated appellant's wage-loss compensation effective March 10, 2013.¹⁰ On September 30, 2014 appellant, through counsel, requested reconsideration with OWCP. In a merit decision

⁴ 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.

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 Counsel submitted with his fee petition a signed statement from appellant dated November 22, 2016 agreeing that the fees were reasonable.

¹⁰ Docket Nos. 13-2019 and 14-310 (issued June 18, 2014). By that decision the Board also found that appellant received an overpayment of compensation in the amount of \$127,142.08 because she forfeited her entitlement to compensation for the period June 1, 2006 to September 19, 2009 and that she was at fault in the creation of the overpayment.

dated December 29, 2014, OWCP determined that the evidence presented on reconsideration was not of sufficient probative value to modify the June 18, 2014 decision.

On appeal counsel submitted a six-page brief presenting the facts of the case and Board precedent in similar cases. He argued that Board precedent supported finding that OWCP had not met its burden of proof to terminate appellant's wage-loss compensation.

Counsel provided a fee petition and statement of service before the Board on November 28, 2016.

OWCP's decision on appeal was dated December 29, 2014, and the appeal was filed with the Board on January 20, 2015. The Board issued its decision on September 23, 2016. The fee petition requests approval of time from January 12, 2015 through September 23, 2016 and documents 6.3 hours spent in connection with this appeal before the Board for a total of \$2,007.50. The petition reflects .70 hours at \$425.00 in 2015 and 1.70 hours at \$475.00 (in 2016) per hour for Daniel M. Goodkin, Esquire, for a total of \$1,105.00, .40 hours at \$550.00 an hour for Steven E. Brown, Esquire, in the amount of \$220.00 and 3.50 hours at \$195.00 an hour for Paralegal Erika Bauer for a total of \$682.50.

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 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 \$2,007.50.¹¹

Issued: December 19, 2017
Washington, DC

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

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

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