

- (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

The fee petition contains an itemized statement setting forth a description of the work performed on appeal, the time and hourly rate for each charge, and the total balance of fees in the amount of \$1,062.75. 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. As an attachment to the fee petition is an acknowledgement, signed by appellant on April 7, 2019, that she consented to payment of a fee in the amount of \$1,062.75.

The Board has carefully reviewed the fee petition, and finds that it satisfies the requirements of section 501.9(e) of the Board's *Rules of Procedure*.¹⁰ However, the Board finds that the fee shall be granted in the amount of \$1,062.75 as that amount is consistent with the petition's itemized statement and has been acknowledged by appellant as the amount owed. The petition does not support a fee in the amount of \$1,856.75, as requested, as the petition does not contain a basis for claiming an additional \$794.00 fee.

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.”¹¹ 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 one year, or both.

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 *Supra* note 3.

¹¹ *Id.*

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,062.75.¹²

Issued: February 3, 2020
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.