



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

- (1) The usefulness of the Representative's services;<sup>5</sup>
- (2) The nature and complexity of the appeal;<sup>6</sup>
- (3) The capacity in which the Representative has appeared;<sup>7</sup>
- (4) The actual time spent in connection with the Board appeal;<sup>8</sup> and
- (5) Customary local charges for similar services.<sup>9</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. No response was received.

The requested fees pertain to services performed before the Board in the above-referenced appeal. The Board notes that in its decision dated September 6, 2018, it reversed the March 24, 2017 decision of the Office of Workers' Compensation Programs (OWCP), finding that OWCP had not met its burden of proof to terminate appellant's wage-loss compensation benefits effective June 3, 2012.

On appeal counsel submitted a brief addressing the issues on appeal. He cited legal authorities in support of his arguments and identified and argued medical evidence to challenge OWCP's decision terminating appellant's wage-loss compensation benefits.

On April 15, 2019 counsel provided a fee petition addressing the specific amounts that were being claimed for work before the Board. He addressed the usefulness of his services based on the nature and complexity of the claim and actual time spent on development and representation of the claim. Counsel discussed his communication with appellant during his representation before the Board and addressed the customary local charges for similar services. He provided a time and expense statement which specifically addressed the hourly rates charged by him during his representation. He also provided an affidavit dated April 8, 2019 pertaining to the itemized accounting of services claimed.

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<sup>5</sup> 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.

<sup>6</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>7</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>8</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>9</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.

OWCP's decision on appeal was dated March 24, 2017 and the appeal was filed with the Board on August 4, 2017.

The fee petition requests approval of time from March 24, 2017 through April 7, 2019 and documents 6.10 hours spent in connection with this appeal before the Board. The fee petition documents the fees as \$200.00 per hour for C.B. Weiser, Esquire. The fee petition described the specific services provided for the amount claimed.

The Board has reviewed the fee petition and finds that 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 \$1,240.70.

Issued: April 13, 2022  
Washington, DC

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

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