

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

- (1) The usefulness of the Representative's services;⁵
- (2) The nature and complexity of the appeal;⁶
- (3) The capacity in which the Representative has appeared;⁷
- (4) The actual time spent in connection with the Board appeal;⁸ and
- (5) Customary local charges for similar services.⁹

By order dated August 27, 2014, the Board denied counsel's fee petition as it had failed to adequately delineate the services performed and otherwise failed to explain in detail how the claimed fee was justified under the five factors listed above. Counsel was permitted 60 days to resubmit the fee petition.

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.¹⁰ No response was received.¹¹

On September 29, 2014, counsel submitted a supplemental fee petition limiting the scope of the initial September 4, 2012 request and clarifying other aspects of the fee petition. The requested fees pertain to services performed before the Board in the above-referenced appeal, which involved an April 14, 2008 merit decision wherein the Office of Workers' Compensation Programs (OWCP) denied wage-loss compensation beginning July 21, 2005. Appellant sought

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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).

⁹ 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.

¹⁰ 20 C.F.R. § 501.9(e).

¹¹ The September 4, 2012 fee petition was accompanied by an August 27, 2012 signed statement from appellant expressing his belief that the fees charged by counsel were reasonable.

disability compensation due to his May 1, 1995 employment-related lumbar condition.¹² His representative filed the appeal on July 1, 2008, and subsequently submitted a 15-page brief.¹³ The Board issued its decision on April 16, 2009, which affirmed OWCP's April 14, 2008 decision. Counsel subsequently filed a petition for reconsideration, which the Board denied by order dated September 17, 2009.

With respect to the current appeal, the fee petition requests approval of time from July 1 through July 21, 2008 and May 15 through May 21, 2009, and documents 42.3 hours spent in connection with this appeal before the Board for a total of \$9,682.50. Appellant's lead counsel, John S. Evangelisti, Esq., billed his services (2.6 hours) at an hourly rate of \$300.00.¹⁴ Additionally, Christopher Lopez, Esq. billed his services (39.4 hours) at \$225.00 per hour. A substantial portion of the hours billed were devoted to preparing the 15-page brief filed with the Board in July 2008. Counsel represented that he and appellant had entered into a written fee agreement. Appellant's counsel also represented that the respective hourly rates he and co-counsel charged were both reasonable and customary, and had previously been approved in similar cases.

Regarding the nature and complexity of the case, in his brief counsel raised a number of arguments with respect to the type of work appellant had performed prior to his July 2005 retirement and whether he was capable of performing his date-of-injury position. The case also involved more than one employment injury. As to the usefulness of counsel's services, he noted that he regularly apprised appellant of the status of his claim and kept him fully informed. And while counsel did not prevail before the Board in the instant appeal, he was ultimately successful in securing wage-loss compensation for appellant retroactive to July 22, 2005, which award exceeded \$175,000.00.

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.

¹² Appellant has a separate emotional condition OWCP File No. xxxxxx905, which OWCP accepted for permanent aggravation of post-traumatic stress disorder (PTSD), with a November 5, 2003 date of injury. The case files with respect to appellant's lumbar condition and PTSD have been combined under claim, File No. xxxxxx905.

¹³ Counsel submitted his brief on July 24, 2008, which the Board received on July 29, 2008.

¹⁴ There was an additional fee of \$37.50 for preparing the July 1, 2008 appeal request (0.3 hours at \$125.00/hr.), which bears the initials of R.B..

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$9,682.50.

Issued: April 19, 2017
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