

appellant's wage-loss compensation, that OWCP had failed to follow the procedural requirements for suitable work termination, that the selected position had been improperly withdrawn, and that physical requirements of the position exceeded appellant's restrictions. He provided the procedural history of the case and cited to Board precedent, OWCP regulations, and the Federal (FECA) Procedure Manual in support of his arguments. Further, counsel distinguished Board cases cited by OWCP in support of its decision. As noted, the Board found that OWCP had failed to follow the proper procedural requirements for a suitable work termination and reversed the January 8 and May 20, 2009 decisions.

By letter dated May 12, 2014, but received by the Board on September 15, 2014, counsel responded to the Board's April 2, 2014 order providing additional information for consideration of the fee request pursuant to 20 C.F.R. § 501.9(e).² He noted that a portion of the originally requested attorney's fee was improper, from October 28, 2009 through December 1, 2009, as it was related to two Freedom of Information Act requests and not to counsel's representation of appellant before the Board. Therefore, he reduced the fee request before the Board by \$292.50 to \$14,512.50.

Counsel noted that appellant did not contest the amount of the fee but failed to provide a signature of appellant noting his approval.³ He also noted that fees for work performed by OWCP are approved on a consistent basis.⁴ Counsel addressed the usefulness of the representative services by submitting legal argument in the claim with citation to Board precedent that was found relevant to the issue on appeal. He noted that he was successful in his argument, as the Board reversed the suitable work termination. Counsel also addressed the time submitted in the fee petition on the case, in communication with appellant and addressed the customary local charges for similar services. He specifically addressed the hourly rates charged by the staff of his law firm in this appeal.

The decisions on appeal before the Board were dated January 8 and May 20, 2009. The amount charged on July 27, 2009 for .30 for \$90.00 was itemized for "draft reconsideration request." As that would not be relevant to work before the Board, it is disallowed. Therefore, the amount of \$90.00 of the requested attorney fees is disallowed.

The Board notes that the bulk of the fees in this case (approximately 54 hours) are charged for the research and preparation of the 21-page brief. Counsel notes that he was successful in obtaining reinstatement of appellant's wage-loss benefits, that the evidence, argument, and pleadings before the Board were well prepared and decisive in obtaining full

² By order dated April 2, 2014, the Board provided counsel 60 days to supplement his fee petition. Counsel's supplemental pleading was not received until September 15, 2014, well beyond the 60-day period. The Board, in its discretion, waives the 60-day time limit in this case and will hear counsel's argument.

³ Counsel noted that the fee agreement was unsigned due to an oversight, but provided copies of appellant's general releases for access to health and employment records.

⁴ 20 C.F.R. § 10.703(b) and the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Representatives' Services*, Chapter 2.1200.6 (June 2012) pertain to uncontested fees for work performed before OWCP. The procedures implemented by OWCP with regard to the consideration of fees are separate from the Board's review of such applications under 20 C.F.R. § 501.9(e). OWCP and the Board are two separate and distinct bodies and separate application to the Board is required for approval of a fee for legal or other services performed in connection with an appeal. *Evelyn R. Adams*, 10 ECAB 585 (1959).

relief. He further noted that despite the fact that the Board reversed the suitable work termination due to procedural deficiencies, the brief provided to the Board included all the relevant arguments raised on appeal. The Board has carefully reviewed counsel's explanation of the amount of time drafting his brief and finds that the hours itemized for the preparation of the brief filed in this instance is justified. The Board notes, however, that FECA creates a non-adversarial process of claims adjudication and that such costly pleadings should be the exception rather than the rule.

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 to be performed before which it is charging attorney fees.

The Board also notes that it is difficult to ascertain the services for which fees are being charged when the document presented for approval includes fees for services in addition to those before the Board. It is requested that only the fees charged for work before the Board be included in the request to be approved by the Board. The Board strongly discourages counsel from submitting petitions with redactions, corrections, or additions because the Board is without knowledge of who made the changes or why they were made.

The Board notes that counsel submitted a statement in support of his petition. The Board encourages counsel to affirm the accuracy of the information provided in their fee petitions as an indication that due care was taken in the preparation of the petition.

The Board has reviewed the fee petition and additional information submitted by counsel and finds, with the above-noted exceptions, that it satisfies the requirements of section 501.9(e) of the Board's implementing federal regulations.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of fourteen thousand, four hundred and twenty-two dollars and fifty cents (\$14,422.50).⁵

Issued: December 29, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁵ Michael E. Groom, Alternate Judge, participated in the original decision but was no longer a member of the Board effective December 27, 2014.