

June 8, 2010 OWCP decision was set aside and the case remanded for a proper decision, in accordance with FECA Bulletin 09-05.

The documents on appeal include an eight-page attachment to appellant's AB-1 form addressing the issue on appeal and counsel appeared before the Board for oral argument. Counsel cited to appropriate Board precedent on the issue of modification of a wage-earning capacity decision. In citing *A.J.*, Docket No. 10-619 (issued June 29, 2010) he pointed out that an "odd lot" or "makeshift" position could not be the basis of a wage-earning capacity decision and also cited to *J.M.*, Docket No. 07-482 (issued May 15, 2007) in support of his argument that a wage-earning capacity could not be used if it were outside appellant's physical job restrictions. Counsel also noted provisions of OWCP procedure manual and noted specifically FECA Bulletin 09-05. As noted, the Board found that OWCP had failed to properly adhere to the procedural requirements of FECA Bulletin 09-05 and thus the case was remanded for a proper decision.

On May 27, 2014 counsel responded to the Board's May 2, 2014 order providing additional information for consideration of the fee request pursuant to 20 C.F.R. § 501.9(e). He noted that appellant did not contest the amount of the fee.² Counsel addressed the usefulness of the representative services by noting he submitted legal argument in the claim with citation to Board precedent that was found relevant to the issue on appeal. He noted particularly the complexity of the employing establishment's NRP which was the subject of an OWCP bulletin explaining how these unusual cases would be processed and the subject of significant litigation.

Counsel noted that the time spent on the appeal was documented 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 regard, however, the Board finds excessive billing while the appeal was pending before the Board. In many cases, counsel included multiple billings by various staff members for "conference with attorneys (or w/attorney and paralegal) re: case status" or "review file for current status." In each of these meetings, which appear on the average of every six weeks, generally two attorneys and a paralegal are in attendance and bill for their time collectively. Each attendee's participation is described in similar fashion. No rationale or justification for this redundant billing practice was offered. Absent a detailed explanation on how each particular conference, and each attendee, assisted appellant in furtherance of this appeal, the billed amounts for these status conferences are disallowed. Although it is difficult to

² Counsel cited to the provisions of the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Representatives' Services*, Chapter 2.1200.6 (June 2012) and inquired as to whether they pertain to uncontested fees for work performed before the Board. The procedures implemented by OWCP with regard to the consideration of fees are separate from the Board's review of such applications under section 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).

determine the actual amount billed for this time, the Board will disallow these 3.40 hours (July 8, August 4, September 2 and December 14, 2010; and February 3/4, March 3 and October 26, 2011 and August 28, 2012) as excessive and redundant.³

Daniel Goodkin	1.70 @	\$395.00	\$ 671.50
Steven Brown	1.00@	\$525.00	\$ 525.00
Vicky Camacho	.70@	\$185.00	\$ <u>129.50</u>
Total:			\$1,326.00

The Board further notes that the overall itemized time billed for the work performed before the Board is also excessive. The work before the Board is limited in scope and time. Once an appeal, and any associated brief, is filed with the Board, along with any legal argument presented in the form of oral argument, the matter rests within the jurisdiction of the Board for final decision. The statutory authority under which the Board exercises its jurisdiction has been in existence since 1946 and, with only two substantive amendments to the statute since that time, the case law well understood. Different interpretations can be argued from both the facts and the law, but there is a point beyond which counsel's fees are excessive and cannot be approved. This case presents us with that situation. Although counsel zealously and successfully represented appellant in this case, the Board will nonetheless only approve a total of \$15,000. The Board is mindful of the novel issues presented in this case, the presentation of oral argument and the excellent quality of the legal briefs, but finds that in the particular facts presented in this case any amount over \$15,000 is excessive.

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.”

The Board finds that the fee petition otherwise satisfies the requirements of section 501.9(e) of the Board's implementing federal regulations.

³ While not directly pertaining to claims under FECA, the Board finds instructive the decision of the United States Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In any fee petition, counsel must use billing judgment and exclude redundant or unnecessary hours and to confirm that the fee requested is not excessive. Adequate documentation should be submitted to support the hours of work performed with specificity or a reasonably precise description of the work performed on behalf of the client.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of fifteen thousand dollars (\$15,000.00).⁴

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

⁴ Michael E. Groom, Alternate Judge, participated in the original decision but was no longer a member of the Board effective December 27, 2014.