

- (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

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.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. In its decision dated August 2, 2013, the Board affirmed the February 1, 2012 decision of OWCP. The Board found that OWCP properly suspended appellant's compensation benefits due to her failure to attend a scheduled medical examination. Further, the Board affirmed as modified a February 2, 2012 OWCP decision, finding that appellant's claim for a recurrence of disability was precluded under the suspension provision of section 8123(d) of FECA.

On appeal appellant's counsel submitted a 10-page brief in support of the appeal, citing pertinent case law in support of his arguments. Counsel argued that OWCP had failed to follow its own procedures when denying appellant's claim for a recurrence. He provided a factual history of the claim and offered alternative arguments in support of his position. Counsel argued that OWCP improperly selected its referee physician and failed to properly consider the medical evidence submitted by appellant's attending physician regarding the effects of her temporomandibular joint (TMJ) condition.

The appeal in this case was filed July 27, 2012 and the Board's decision was dated August 2, 2013. The dates of services rendered were September 3 through October 2, 2012 and August 14 and 27, 2013.

OWCP's decisions on appeal were dated February 1 and 2, 2012 and the appeal was filed with the Board on July 27, 2012. The fee petition requests approval of time from September 3, 2012 through August 27, 2013 and documents 18.5 hours spent in connection with this appeal

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 The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that she agreed with the requested fee for services rendered.

before the Board at \$300.00 per hour for John S. Evangelisti, Esquire, and \$225.00 per hour for Christopher Lopez, Esquire.

In this regard, however, the Board finds excessive billing after the appeal was before the Board. The 0.3 total hours of legal services rendered by Mr. Evangelisti on August 14 and 27, 2013 were not spent in connection with this appeal before the Board. The description of services for August 14 and 27, 2013 include writing a letter “to Claims Examiner re: willing to attend referee exam” and reviewing and responding to appellant’s e-mail regarding the status of her OWCP claim. Moreover, the Board’s decision was issued on August 2, 2013 and the dates of Mr. Evangelisti’s legal services are August 14 and 27, 2013.

The Board finds that these are improper billing charges. The billed amounts for the letter and e-mails are disallowed. The Board will disallow 0.3 hours on August 14 and 27, 2013:¹⁰

John S. Evangelisti	.30@ \$300.00	\$ 90.00
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The Board has carefully reviewed the fee petition and finds it, as modified, otherwise 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.”

¹⁰ 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 \$4,110.00.

Issued: April 21, 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