

Under these regulations, the Board must consider the petition under the following general criteria:

- (1) The usefulness of the Representative's services;⁴
- (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

By order dated December 28, 2016, the Board denied counsel's prior fee petition as it had failed to adequately delineate the services performed for the three above-referenced appeals 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(s).

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.⁹ No response was received.

The requested fees pertain to services performed before the Board in the three above-referenced appeals.

In a March 24, 2011 decision, the Office of Workers' Compensation Programs (OWCP) found that appellant had forfeited his entitlement to wage-loss compensation appellant received between March 1, 1992 and June 15, 2006 due to his failure to report his self-employment activities on various EN1032 forms.¹⁰ On September 15, 2011 counsel filed a timely application

⁴ 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.

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 20 C.F.R. § 501.9(e).

¹⁰ In an April 20, 2011 letter, OWCP advised appellant of its preliminary determination that he had received a \$429,961.37 overpayment of compensation for the period March 1, 1992 to June 15, 2006, which was caused by the forfeiture of compensation for that period.

for review of OWCP's March 24, 2011 decision and filed a brief with the Board on October 18, 2011. By order dated July 16, 2012, the Board dismissed appellant's appeal because the forfeiture issue appealed to the Board was in an interlocutory posture.¹¹ It noted that, on August 4, 2011, an OWCP hearing representative had remanded the case to OWCP for further development regarding the forfeiture and overpayment, to be followed by a new decision.

In a June 12, 2012 decision, an OWCP hearing representative found an overpayment of compensation in the amount of \$382,003.56 and that he was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. On August 24, 2012 counsel filed a timely application for review of OWCP's June 12, 2012 decision and filed a brief with the Board on November 6, 2012. By decision dated May 7, 2013, the Board set aside OWCP's June 12, 2012 decision and remanded the case to OWCP for further development. The Board found that its June 12, 2012 decision did not contain detailed facts and findings regarding the forfeiture, *i.e.*, the presumed basis for the overpayment, and that therefore it was premature to consider whether OWCP had properly found an overpayment of compensation and whether appellant was at fault in the creation of such an overpayment. The Board directed OWCP to issue an appropriate decision on the forfeiture and overpayment matters.¹²

In a June 4, 2014 decision, OWCP found that appellant forfeited his entitlement to compensation for the periods March 1, 1992 to July 19, 1995, May 16, 1996 to July 16, 1997, and May 1, 1998 to June 15, 2006. It also found that appellant received an overpayment of compensation in the amount of \$382,003.58 and that he was at fault in the creation of the overpayment, thereby precluding recovery of waiver of the overpayment. On August 21, 2014 appellant, through counsel, filed a timely application for review of OWCP's June 4, 2014 decision and a 17-page brief which presented the factual history of the case and provided Board precedent regarding the forfeiture and overpayment issues. He argued that OWCP's forfeiture determination was not warranted because appellant had not knowingly failed to report income or employment activities. By decision dated July 7, 2015, the Board affirmed in part the June 4, 2014 forfeiture decision, but modified the decision to reflect a shorter period than that determined by OWCP.¹³ The Board remanded the case to OWCP for further action.

On January 24, 2017 counsel filed an updated fee petition for each of the three above-referenced appeals in the total amount of \$12,857.50. He addressed the usefulness of his services noting that his efforts before the Board brought relief for appellant. Counsel addressed the hourly rates charged by himself, his associate, and his paralegal, noting that they had been found reasonable in other administrative tribunals.

¹¹ Docket No. 11-2061 (issued July 16, 2012).

¹² Docket No. 12-1793 (issued May 7, 2013).

¹³ Docket No. 14-1863 (issued July 7, 2015). The Board found that the evidence supported that appellant forfeited his entitlement to compensation for the periods May 1, 1993 to July 19, 1995, April 16, 1996 to July 16, 1997, and April 1, 1998 to June 9, 2005. The case was remanded to OWCP for further development, including recalculation of the amount of the overpayment resulting from the forfeiture of compensation, and issuance of an appropriate decision.

The fee petition for Docket No. 11-2061 requests approval of \$3,290.00 in services from September 12, 2011 through March 30, 2012 and documents 11.25 hours spent in connection with this appeal before the Board at \$300.00 per hour for 10.85 hours for John S. Evangelisti, Esquire for a total of \$3,255.00,¹⁴ and \$175.00 per hour for 0.20 hours for Paralegal Jodi Waldron for a total of \$35.00. The fee petition described the specific services provided for the amounts of time claimed.

The fee petition for Docket No. 12-1793 requests approval of \$3,570.00 in services from June 18, 2012 through May 9, 2013 and documents 15.20 hours spent in connection with this appeal before the Board. The fee included \$300.00 per hour for 2.20 hours for John S. Evangelisti, Esquire for a total of \$660.00, \$225.00 per hour for 12.70 hours for Christopher Lopez, Esquire for a total of \$2,857.50, and \$175.00 per hour for 0.20 hours for Paralegal Jodi Waldron for a total of \$35.00. The fee petition described the specific services provided for the amounts of time claimed.

The fee petition for Docket No. 14-1863 requests approval of \$5,997.50 in services from June 12 through December 17, 2014 and documents 26.55 hours spent in connection with this appeal before the Board. The fee included \$300.00 per hour for 0.45 hours for John S. Evangelisti, Esquire for a total of \$135.00, \$225.00 per hour for 25.90 hours for Christopher Lopez, Esquire for a total of \$5,827.50, and \$175.00 per hour for 0.20 hours for Paralegal Jodi Waldron for a total of \$35.00. The fee petition described the specific services provided for the amounts of time claimed.

The Board has carefully reviewed the three fee petitions, and finds that they satisfy the requirements of section 501.9(e) of the Board's implementing regulations. The Board concludes that the total 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 18 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.

¹⁴ Counsel did not charge for .10 hours on November 7, 2011 and .10 hours on March 30, 2012.

IT IS HEREBY ORDERED THAT the three fee petitions are granted in the total amount of \$12,857.50.¹⁵

Issued: December 18, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

¹⁵ Colleen Duffy Kiko, Judge, participated in the preparation of this order, but was no longer a member of the Board effective December 11, 2017.