

Pursuant to its regulation, the Board considered the fee petition under the following 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 October 2, 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 especially noting that appellant objected to the fee requested. The Board also requested counsel to provide additional information concerning the solicitation and collection of fees from appellant. 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 resubmitted fee petition.⁹ No response was received.¹⁰ On April 1, 2014 the Clerk of the Appellate Boards received appellant's letter disputing the amount of fees being charged.

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant met her burden of proof to establish that modification of a March 13, 2012 loss of wage-earning capacity determination was warranted. By decision dated June 29, 2012, OWCP denied appellant's request for modification. By decision dated August 22, 2013, the Board affirmed OWCP's denial of her request for modification of the March 13, 2012 loss of wage-earning capacity determination.

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 The Board notes that included with the counsel's fee petition was a signed statement from appellant indicating that she found the requested fee to be reasonable and appropriate.

On appeal, counsel submitted a three-page brief arguing that the constructed position used to establish the March 13, 2012 loss of wage-earning capacity decision was not suitable and that OWCP failed to address the medical evidence of record. Lastly, counsel argued that the impartial medical adviser failed to consider her nonindustrial conditions when determining her work capability.

On November 18, 2014 counsel provided a supplemental fee petition addressing the deficiencies previously noted by the Board. He clarified the different amounts being charged for two individuals in the itemized statements. Counsel addressed the usefulness of his services noting that the case was complex and involved a loss of wage-earning determination. He discussed his communication with appellant during the representation before the Board and addressed the customary local charges for similar services. Counsel specifically addressed the hourly rates charged by the staff of his law firm, noting that they had been found reasonable in other administrative tribunals.

OWCP's decision on appeal was dated June 29, 2012 and the appeal was filed with the Board on October 25, 2012. The fee petition requests approval of time from October 1, 2012, through August 27, 2013 and documents .5 hours spent in connection with this appeal before the Board at \$525.00 per hour for Steven E. Brown, Esq., 1.20 hours at \$395.00 and 1.60 hours at \$425.00 for Daniel M. Goodkin, Esq., and .70 hours at \$195.00 per hour and 1.80 hours at \$185.00 per hour for Paralegal Erika Bauer. No information was provided as to the date of the fee increase, but it appears to have increased between January 1 and April 17, 2013.

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 "Office meeting on file status." In each of these meetings generally two attorneys and a paralegal are in attendance and bill for their time collectively. Each attendee's participation is described in the 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. The Board will disallow these 1.90 hours (October 2, 2012, January 30, April 17,¹¹ and August 1, 2013) as excessive and redundant:¹²

Daniel Goodkin	0.50@	\$395.00	\$197.50
	0.50@	\$425.00	\$212.50
Steven Brown	.50@	\$525.00	\$262.50
Erika Bauer	.20@	\$185.00	\$ 37.00
	.20@	\$195.00	\$ <u>39.00</u>
Total:	1.90		\$748.50

¹¹ It appears that Steve Brown has been double billed for this date.

¹² 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.

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."

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,125.50.

Issued: August 22, 2016
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