



- (2) The nature and complexity of the appeal;<sup>5</sup>
- (3) The capacity in which the Representative has appeared;<sup>6</sup>
- (4) The actual time spent in connection with the Board appeal;<sup>7</sup> and
- (5) Customary local charges for similar services.<sup>8</sup>

By order dated February 12, 2015 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. Counsel was permitted 60 days to resubmit the fee petition.

As required by the Board's regulation, appellant has been afforded written notice of the fee requested and provided an opportunity to comment on the fee petition.<sup>9</sup>

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated March 14, 2013 (concerning both Docket Nos. 12-1846 and 13-0349) the Board set aside the May 18 and November 15, 2012 decisions of the Office of Workers' Compensation Programs (OWCP) and remanded the case to OWCP for further action.<sup>10</sup> The Board found the case was not in posture for determination regarding whether the December 7, 2007 wage earning capacity determination should be modified.

On appeal, counsel submitted an 11-page brief in support of Docket No. 12-1846 appeal and a 6-page brief in support of the Docket No. 13-0349 appeal. Both briefs contained supporting legal citation for the argument that the December 7, 2007 wage-earning capacity determination of OWCP should be modified. Counsel did not request oral argument before the Board.

On April 6, 2015 counsel provided a supplemental fee petition addressing the deficiencies previously noted by the Board. He clarified the events listed in the itemized fee petition and the hourly charges for the individuals in the itemized statements. Counsel addressed

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> 20 C.F.R. § 501.9(e). The Board notes that included with the fee petition was a signed statement from appellant indicating that she found the requested fee to be reasonable and appropriate.

<sup>10</sup> OWCP issued a May 18, 2012 wage-earning capacity determination in connection with the file associated with Docket No. 12-1846 and a November 15, 2012 wage-earning capacity determination in connection with the file associated with Docket No. 13-0349.

the usefulness of his services noting that the case had some complexity complex and that he was successful in his argument to the Board. He also discussed his communication with appellant during the representation before the Board and addressed the customary local charges for similar services. Counsel specifically addressed his hourly rates and noted that they had been found reasonable in other administrative tribunals.

OWCP's decisions on appeal were dated May 18 and November 27, 2012 and the appeals were filed with the Board on August 30, 2012. The fee petition requests approval of time from August 27, 2012 through November 26, 2012 and documents 16.4 hours spent in connection with the appeal before the Board for Docket No. 12-1846 and 1.4 hours spent in connection with the appeal for Docket No. 13-0349, for a total of 17.8 hours. The fee petition also documents the customary local charges for similar services as \$200.00 per hour.

The Board has carefully reviewed the fee petition and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulation.

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 sum of \$3,560.00.<sup>11</sup>

Issued: November 8, 2016  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> Michael E. Groom, Alternate Judge, participated in the original decision, but was no longer a member of the Board effective December 27, 2014 and did not participate in the preparation of this order.