



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

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.<sup>8</sup>

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether appellant had established a modification of an August 20, 1998 wage-earning capacity determination was warranted. An oral argument before the Board was held on May 29, 2014. By decision dated June 26, 2014, the Board set aside a June 11, 2013 OWCP decision. The Board indicated that OWCP should have further developed the medical evidence on the issue of whether post-traumatic stress disorder (PTSD) was an employment-related condition, and whether there was a material change warranting a modification of the wage-earning capacity determination.

On appeal counsel submitted a five page appeal letter with arguments and citations to Board case law and OWCP procedures. He requested oral argument before the Board and provided arguments in support of the request. The Board granted the request for oral argument by order dated April 8, 2014. Counsel attended the May 29, 2014 oral argument and presented arguments. He summarized the lengthy factual and medical history and argued that the evidence was sufficient to warrant a modification of the August 20, 1998 wage-earning capacity determination.

By order dated August 27, 2014, the Board denied appellant's fee petition as it had 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.

On September 12, 2014 counsel provided a supplemental fee petition and a statement of service requesting approval of fees totaling \$7,000.00. The fee petition listed 27.10 hours of

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<sup>4</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 attorney must establish the complex or unusual nature of the appeal.

<sup>5</sup> The Board's consideration of the "capacity" in which an attorney appears includes, but is not limited to, whether the attorney obtained a written retainer and fee agreement.

<sup>6</sup> The Board's evaluation of an attorney's 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 counsel 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>7</sup> The Board's consideration of customary, local fees recognizes that attorneys often have clients in several states and that local custom must be balanced against national practice in FECA appeals.

<sup>8</sup> 20 C.F.R. § 501.9(e). Appellant submitted a June 9, 2014 letter indicating he agreed with the requested fee for services rendered on the appeal.

services at \$320.00 per hour. The description of services included preparation for oral argument, research, travel, and correspondence with appellant. Counsel indicated that the amount billed to appellant was reduced from \$8,672.00 to \$7,000.00.

The Board has carefully reviewed the fee petition, and finds that it is sufficient to satisfy the requirements of section 501.9(e) of the Board's implementing regulations. Considering the five factors enumerated above, including the usefulness of the services provided, the complexity of the appeal, the time spent, and customary local charges, the Board concludes the 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 for up to a year, or both.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$7,000.00.

Issued: May 17, 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