



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

- (1) The usefulness of the Representative's services;<sup>4</sup>
- (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>

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>9</sup> On November 10, 2014 the Clerk of the Board received a signed statement in which appellant indicated that the requested fee of \$610.00 was reasonable and appropriate. Appellant expressed her understanding that she was responsible for payment of the fee.

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated August 7, 2013, the Office of Workers' Compensation Programs (OWCP) found that appellant was not entitled to compensation after June 24, 2008 due to her accepted left knee conditions. By decision dated September 3, 2014, the Board set aside OWCP's August 7, 2013 decision and remanded the case to OWCP for further development. The Board found that, in denying appellant's claim for compensation after June 24, 2008, OWCP impermissibly shifted the burden of proof from OWCP to appellant. The case was remanded to OWCP in order to apply the proper burden of proof standard to appellant's claim for compensation after June 24, 2008 and to issue an appropriate decision.

On October 20, 2014 counsel provided a fee petition and a statement of service requesting approval of fees totaling \$610.00.

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<sup>4</sup> 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.

<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 FECA appeals.

<sup>9</sup> 20 C.F.R. § 501.9(e).

OWCP's decision on appeal was dated August 7, 2013 and the appeal was filed with the Board on August 19, 2013. The fee petition requests approval of services from August 12 to September 3, 2014 and documents 2.2 hours spent in connection with this appeal before the Board at \$425.00 per hour for 0.5 hours for Daniel M. Goodkin, Esq., \$525.00 per hour for 0.2 hours for Steven E. Brown, Esq., and \$195.00 per hour for 1.5 hours for Paralegal Erika Bauer. The fee petition described the specific services provided for the amount claimed.

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 regulations. The Board concludes that 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 up to a year or both.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$610.00.<sup>10</sup>

Issued: November 2, 2016  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> Richard J. Daschbach participated in the preparation of the Board's September 3, 2014 decision but was no longer a member of the Board after May 16, 2014 and did not participate in the preparation of this order.