

Pursuant to the Board's regulation, as the fee requested was not *de minimis*, the Board must consider 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

Regarding the usefulness of the representative's services, the Board notes that in the decision dated July 22, 2014 the Board affirmed in part, and set aside in part the August 16, 2013 decision of the Office of Workers' Compensation Programs (OWCP). The Board found that OWCP met its burden of proof in establishing that appellant was overpaid for 65 hours during the period June 29, 1992 to February 19, 1993. The Board further found that the case was not in posture regarding the amount of the overpayment of compensation. Additionally, the Board found that appellant was at fault in creation of the overpayment and that the overpayment was therefore not subject to waiver of recovery.

The issue on appeal concerning the possible overpayment, as well as the issue of fault in its creation, required a merit review by the Board. On appeal appellant's counsel submitted a 14-page brief with supporting legal citation in support of her argument that appellant was not at fault in creating the overpayment of compensation and that OWCP erred by denying waiver of recovery. Appellant's counsel requested an oral argument before the Board.

Appellant's counsel appeared before the Board at oral argument in her capacity as properly appointed legal counsel.

⁴ The Board's consideration of "usefulness" includes, but is not limited to, the frequency and quality of communication by the attorney with the client, the factual evidence and legal argument offered by the attorney and written pleadings filed in the case. The Board will also consider the usefulness of an attorney'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 attorney must establish the complex or unusual nature of the appeal.

⁶ 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.

⁷ 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).

⁸ 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 the FECA appeals.

The fee petition documents 28.25 hours spent in connection with this appeal before the Board. The fee petition also documents the customary local charges for similar services as \$150.00 per hour.

The Board has reviewed the fee petition and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulation. The Board after review of the petition concludes that the fee requested is reasonable.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of four thousand, two hundred, and thirty-seven dollars and fifty cents (\$4,237.50).⁹

Issued: October 13, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

⁹ 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.