

- (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

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. No response was received.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. The Board notes that in its decision dated July 21, 2014, it found that OWCP properly computed appellant's pay rate for compensation purposes as of April 11, 2011.

On appeal counsel had submitted a one-page brief with supporting legal citation in support of his arguments that OWCP erroneously determined her pay rate as of April 11, 2011. By decision dated July 21, 2014, the Board affirmed OWCP's December 19, 2013 rate of pay determination.

On August 11, 2014 counsel filed a petition for reconsideration. He again argued that the Board improperly determined appellant's pay rate. Counsel further argued that appellant's condition did not worsen from July 30, 2010 to August 11, 2011, nor was appellant exposed to the same work conditions which had caused or aggravated her injury. By decision dated June 12, 2015, the Board denied the petition for reconsideration.

OWCP's decision on appeal was dated December 19, 2013 and the appeal was filed with the Board on January 21, 2014. The fee petition requests approval of time from January 17, 2014 through September 2, 2015 and documents 9.70 hours spent in connection with this appeal before the Board. The fee petition documents the fees as \$525.00 per hour for Steven E. Brown, Esquire, \$425.00 per hour for Daniel M. Goodkin, Esquire, and \$195.00 per hour for Paralegals Erika Bauer, Jessica Gordon, and Jessica Pope. Counsel cited the exact amounts that were being claimed for work before the Board, and provided an affidavit from appellant, dated

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 The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that she agreed with the requested fee for services rendered.

September 25, 2015, finding the fee reasonable. The statement is clear and detailed, and the attorney has personally affirmed the correctness of the fee.

The Board has reviewed the fee petition and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulations. The Board after review of the petition 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 19 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 \$3,255.50.

Issued: June 22, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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