



- (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> No response was received.<sup>10</sup>

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was a claim for compensation for disability due to a December 14, 2011 employment injury. By decision dated August 28, 2013, OWCP denied appellant's claim for compensation. By decision dated June 23, 2014, the Board affirmed the denial of compensation for the period beginning December 31, 2011 because appellant's temporary appointment had expired. The Board, however, found the case not in posture for decision as to disability beginning July 25, 2012 due to the authorized surgery. The case was remanded for further action.

On appeal counsel submitted a two-page brief arguing that OWCP had erred in determining that appellant was not entitled to wage-loss compensation due to her having been on temporary assignment. Rather counsel argued that her light duty position had been withdrawn. Although the Board did not agree with counsel's argument, it did nonetheless remand the case for further development as to whether wage loss compensation was warranted for a period of time surrounding her authorized July 25, 2012 surgery.

OWCP's decision on appeal was dated August 28, 2013 and the appeal was filed with the Board on January 28, 2014. The fee petition requests approval of time from January 22, 2014 through March 21, 2014, and documents 4.3 hours spent in connection with this appeal before the Board at \$525.00 per hour for Steven E. Brown, Esquire; at \$425.00 per hour for Daniel M.

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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).

<sup>10</sup> The Board notes that included with the counsel's fee petition was a signed statement from appellant indicating that she found the requested fee to be reasonable and appropriate.

Goodkin, Esquire; at \$195.00 per hour for Paralegal Erika Bauer; and at \$195.00 per hour for Paralegal Jessica Gordon.

In this regard, however, the Board finds excessive billing while the appeal was pending before the Board. In two cases, counsel included multiple billings by various staff members for “Conference re client’s case status” or “Office meeting re case status.” This billing occurred on February 20 and March 19, 2014. In each of these meetings, which occurred approximately six weeks apart, one or two attorney, along with a paralegal, were in attendance and each billed for the time collectively. Each attendee’s participation is described in similar fashion. Absent a detailed explanation on how each particular conference or meeting, and each attendee, assisted appellant in furtherance of this appeal, the billed amounts for these status conferences or meetings are disallowed.<sup>11</sup> Accordingly, the Board will disallow 0.50 hours on the above-noted dates:

Steven E. Brown	0.10 @ \$525.00/hour	\$ 52.50
Daniel M. Goodkin	0.20 @ \$425.00/hour	\$ 85.00
<u>Jessica Gordon</u>	<u>0.20 @ \$195.00/hour</u>	<u>\$ 39.00</u>
Total:	0.50 hours	\$176.50

The Board has carefully reviewed the fee petition and finds that, with the above-noted modifications, counsel’s petition otherwise satisfies the requirements of section 501.9(e) of the Board’s implementing regulations.

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.

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<sup>11</sup> See *J.D.*, Docket No. 13-0627 (issued April 28, 2016) (*Order Granting Fee Petition*).

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$1,109.00.<sup>12</sup>

Issued: November 28, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>12</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.