



Pursuant to its regulation, the Board considered the fee petition under the following 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> No response was received.<sup>10</sup>

The requested fees pertain to services performed before the Board in the above-referenced appeal, which involved a February 3, 2014 merit decision wherein the Office of Workers' Compensation Programs (OWCP) denied appellant's occupational disease claim. Her counsel filed the appeal on February 26, 2014, which included a two-page application for review (AB-1) form. The Board issued its decision on August 15, 2014, which set aside in part OWCP's prior decision, and remanded the case for further medical development.

The fee petition requests approval of time from February 18 through August 20, 2014, and documents a total of 3.4 hours spent in connection with this appeal before the Board. Appellant's lead counsel, Steven E. Brown, Esq., billed his services (0.40 hours) at an hourly rate of \$525.00. Additionally, Daniel M. Goodkin, Esq. billed his services (1.90 hours) at \$425.00 per hour, and Erika E. Bauer, a paralegal, billed her services (1.10 hours) at an hourly

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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).

<sup>10</sup> Counsel's fee petition was accompanied by a September 9, 2014 statement from appellant indicating her approval of the requested fee of \$1,232.00.

rate of \$195.00.<sup>11</sup> On the AB-1 form, counsel argued that OWCP had not properly considered a particular physician's opinion regarding causal relationship. The AB-1 was dated February 17, 2014, and the Board received it on February 26, 2014. After the appeal had been filed, the Board did not receive any additional information from either appellant or her counsel prior to issuing its August 15, 2014 decision.

Although the issue on appeal -- causal relationship -- was not particularly complex, the Board notes that appellant's counsel was instrumental in identifying certain medical evidence that was at least sufficient to warrant further development on the part of OWCP. As such, appellant prevailed before the Board, and on remand OWCP ultimately accepted her occupational disease claim. Counsel's overall involvement on appeal proved beneficial; however, not all of the services he and/or his colleagues provided appear to have been useful.

While the appeal was pending before the Board, counsel conducted three "case status" meetings, the first of which occurred within days of filing the February 17, 2014 Form AB-1. Thereafter, counsel and his colleagues met at 8-week intervals. The case status meetings were held on February 26, April 23, and June 18, 2014. On each occasion, Mr. Brown, Mr. Goodkin and Ms. Bauer participated in the meetings, and individually billed appellant 0.10 hours at their respective hourly rates. Counsel offered no rationale or justification for this redundant billing practice. Absent a detailed explanation of how each particular case status meeting -- and the individual participant's involvement -- assisted appellant in furtherance of the appeal, the amounts billed for the February 26, April 23, and June 18, 2014 meetings are disallowed as excessive and redundant.<sup>12</sup> Accordingly, the Board will disallow 0.90 hours on the above-noted dates:

Steven E. Brown	0.30 @ \$525.00/hour ....	\$157.50
Daniel M. Goodkin	0.30 @ \$425.00/hour ....	\$127.50
<u>Erika E. Bauer</u>	<u>0.30 @ \$195.00/hour ....</u>	<u>\$ 58.50</u>
Total:	0.90 hours.....	\$343.50

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 further 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> Counsel did not provide any information regarding the customary local charges for similar services. Also, to the extent appellant and her counsel executed a retainer - fee agreement, counsel has not provided a copy to the Board.

<sup>12</sup> See *In the Matter of 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 \$888.50.

Issued: November 28, 2016  
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