



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. No response was received.

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying merit issue was whether appellant met his burden of proof to establish that a September 4, 2012 right femur fracture occurred in the performance of duty. By decision dated November 30, 2012, OWCP denied appellant's claim, finding that he was not in the performance of duty when injured. On February 21, 2014 it denied his reconsideration request without conducting a merit review. In a decision dated September 5, 2014, the Board found that OWCP improperly denied merit review and remanded the case to OWCP to review of the merits of appellant's claim under OWCP's regulations.<sup>9</sup>

On appeal counsel submitted an application for review (AB-1 form) in which he addressed the factual history of the case and presented Board precedent addressing the requirements for merit review. He argued that he had presented a new legal argument with his request for reconsideration before OWCP, and that OWCP had not addressed this argument in its February 21, 2014 decision.

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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. § 10.606(b)(3). The record indicates that appellant died on February 20, 2015. Subsequent to the Board's decision, on July 30, 2015 OWCP accepted right closed fracture of the lower end of femur.

On September 25, 2014 counsel provided a fee petition and statement of service before the Board.

OWCP's decision on appeal was dated February 21, 2014 and the appeal was filed with the Board on February 28, 2014. The Board issued its decision on September 4, 2014. The fee petition requests approval of time from February 27 through September 5, 2014 and documents 2.90 hours spent in connection with this appeal before the Board at \$425.00 an hour for Daniel M. Goodkin, Esq., \$525.00 an hour for Steven E. Brown, Esq., and \$195.00 per hour for Paralegal Erika Bauer. The fee petition described the specific services provided for the amount claimed.

In this regard, however, the Board finds excessive billing while the appeal was pending before the Board. The fee petition reflects charges on May 7, 2014 described as "call from other attorney re ECAB case status (gave him an update)," on July 9, 2014 "call from other attorney re ECAB still pending," and on July 11, 2014 "call from other attorney re requesting specific info about ECAB case." No rationale or justification for these charges was offered. Absent a detailed explanation on how each particular telephone call and each participant assisted appellant in furtherance of this appeal, the billed amounts for these telephone calls are disallowed. The Board will disallow the 0.40 hours (May 7, July 9, and July 11, 2014) as excessive and redundant:<sup>10</sup>

Daniel Goodkin	0.30@	\$425.00	\$ 127.50
Erika Bauer	0.10@	\$195.00	\$ <u>19.50</u>
Total:	0.40		\$ 147.00

The Board has carefully reviewed the fee petition and finds it, as modified, 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>10</sup> While not directly pertaining to claims under FECA, the Board finds instructive the decision of the United States Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In any fee petition, counsel must use billing judgment and exclude redundant or unnecessary hours and to confirm that the fee requested is not excessive. Adequate documentation should be submitted to support the hours of work performed with specificity or a reasonably precise description of the work performed on behalf of the client.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$819.50.<sup>11</sup>

Issued: November 7, 2016  
Washington, DC

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

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

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<sup>11</sup> Michael E. Groom, Alternate Judge, participated in the preparation of the decision, but was no longer a member of the Board effective December 27, 2014 and did not participate in the preparation of this order.