



- (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.

The requested fees pertain to services performed before the Board in the above-referenced appeal. The Board issued its decision on July 9, 2015. The underlying issue was a claim for wage-loss compensation dating back to September 18, 2004.<sup>10</sup> The Office of Workers' Compensation Programs (OWCP) accepted appellant's traumatic injury claim for permanent aggravation of right hip osteoarthritis, and granted a schedule award for 50 percent impairment of the right lower extremity. But with respect to entitlement to wage-loss compensation, OWCP denied benefits finding that appellant, although unable to perform his date-of-injury job, was not totally disabled from all employment. OWCP further found that the employing establishment had accommodated appellant's work restrictions prior to his September 2004 resignation, and that he effectively abandoned employment. Consequently, OWCP denied wage-loss compensation beginning September 18, 2004. On appeal, the Board set aside OWCP's March 4, 2014 decision, and remanded the case for further factual and medical development.

Counsel appealed the March 4, 2014 decision on March 31, 2014, and as noted the Board issued its decision remanding the case on July 9, 2015. The fee petition requests approval of time from March 8 through May 5, 2014, and documents 10.30 hours spent in connection with this appeal before the Board at \$150.00 per hour for Timothy Quinn, Esq. During the above-noted timeframe, counsel prepared and submitted an initial brief and a supplemental brief for the Board. Of the total hours claimed, 8.3 hours were associated with the preparation and submission of briefs. Counsel represented that his \$150.00 hourly fee was below the local market (Denver, CO) rate for similarly experienced attorneys appearing before the Board.

---

<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> Appellant last worked for the employing establishment on August 25, 2004, but remained in pay status through September 17, 2004. The Social Security Administration (SSA) awarded appellant disability benefits due to severe hip joint arthritis and migraine headaches. According to SSA, appellant was disabled as of September 18, 2004.

Regarding the complexity of the case, counsel noted that the appeal involved a number of issues, which was reflected in the briefs filed and the Board's July 9, 2015 decision. Lastly, with respect to the usefulness of counsel's services, he noted that appellant prevailed before the Board and ultimately on remand before OWCP.<sup>11</sup>

The Board has carefully reviewed the fee petition, and finds it satisfies the requirements of section 501.9(e) of the Board's implementing regulations. The Board 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 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.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$1,545.00.

Issued: August 22, 2016  
Washington, DC

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

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

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

---

<sup>11</sup> The record indicates that OWCP has since awarded wage-loss compensation dating back to September 18, 2004, which included a March 11, 2016 payment in excess of \$275,000.00.