



- (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. By decision dated September 9, 2014, the Board reversed OWCP's December 23, 2013 decision, which terminated appellant's compensation benefits effective January 12, 2014.

On appeal counsel had submitted a six-page letter addressing the factual history of the case and arguing that the medical opinion of an OWCP referral physician was not entitled to the weight of the medical evidence as the statement of accepted facts (SOAF) provided to him contained an inaccurate summary of appellant's accepted conditions and he incorrectly stated that specific diagnostic testing had not been performed. He also argued that appellant's claim should have been accepted for an aggravation of degenerative disc disease based on an impartial medical examiner's medical report. Lastly, counsel argued that the record was incomplete as it did not contain a SOAF prepared prior to 1998 which was referenced by numerous referral physicians.

OWCP's decision on appeal was dated December 23, 2013 and the appeal and supporting letter were filed with the Board on April 14, 2014. The fee petition requests approval of time from April 28 through September 11, 2014 and documents 14.7 hours spent in connection with this appeal before the Board at \$400.00 per hour for counsel a total of \$5,880.00.

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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 he agreed with the requested fee.

The Board notes that it is difficult to ascertain the services for which fees are being charged when the document presented for approval includes fees for services before both OWCP and the Board. It is requested that only the fees charged for work before the Board be included in the request to be approved by the Board. The Board strongly discourages counsel from submitting petitions with redactions, corrections, or additions because the Board is without knowledge of who made the changes or why they were made.<sup>11</sup>

As to the time spent and usefulness of the representation, the Board recognizes that counsel's pleading consists merely of a compilation of documents photocopied from the record and pasted into the document, with short explanatory paragraphs. Although counsel's itemized statement of fees indicates that a large amount of research was performed, his pleading did not advance any legal arguments, nor did it include any citations to Board case law. The Board finds that counsel in this instance has failed to establish adequate justification for the full amount of his fee based on the amount of time spent, and the usefulness of the representation and the complexity of this case.

The Board has carefully reviewed the fee petition and finds it fails to satisfy the requirements of section 501.9(e) of the Board's implementing regulations, to the extent noted above. As such, the Board will approve a fee of \$4,520.00 in this matter. This amount represents approval of 11.3 hours at \$400.00 per hour.<sup>12</sup>

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.

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<sup>11</sup> In fact, the fee petition submitted to the Board for approval also included \$4,000.00 in additional itemized fees for work performed before OWCP.

<sup>12</sup> This reduces the time allowed for preparation of the brief by 3.4 hours.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$4,520.00.

Issued: January 11, 2017  
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