



- (3) The capacity in which the Representative has appeared;<sup>4</sup>
- (4) The actual time spent in connection with the Board appeal;<sup>5</sup> and
- (5) Customary local charges for similar services.<sup>6</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>7</sup> She submitted a letter dated March 24, 2016, indicating that she did not believe the requested attorney's fee should be approved. Appellant indicated she had initially agreed to a flat fee of \$5,000.00 for her case, which she thought would include the appeals process. She opined that she did not believe counsel had honestly documented the actual time spent on the appeal.

The Board has considered the fee petition and finds that it should be denied. Counsel submitted a letter dated February 15, 2015 asserting that he agreed to represent appellant on the appeal for a flat fee of \$3,500.00. He provided an accounting of time from December 13, 2014 to September 30, 2015, for 9.75 hours at \$275.00 per hour, for \$2,681.25. Included in the accounting are conferences with another attorney, Lance Perdue. As the Board has indicated, counsel must provide a detailed explanation as to how such conferences assisted appellant in the furtherance of this appeal.<sup>8</sup> He also submitted a February 19, 2015 invoice from Lance Perdue, for undated legal services in the amount of \$1,755.00, without providing additional explanation.

The fee argument did not reference any work before the Board and was executed before the final OWCP decision has issued. In the future, all such fee arguments should be specific as to the forum, the state when counsel is retained, hourly rates, and the specific legal work performed.

The fee petition submitted fails to properly explain in detail how the claimed fee is justified under the five factors listed above. There is no discussion as to the nature and complexity of the appeal, detailed explanation of the time spent in connection with the appeal, or the fee claimed. Appellant has raised concerns regarding the fee petition that have not been addressed, and there is insufficient supporting documentation to grant the fee petition under 5 U.S.C. § 8127 and 20 C.F.R. § 501.9(e).

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<sup>4</sup> The Board's consideration of the "capacity" in which an attorney appears includes, but is not limited to, whether the attorney obtained a written retainer and fee agreement.

<sup>5</sup> The Board's evaluation of an attorney's 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 counsel 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>6</sup> The Board's consideration of customary, local fees recognizes that attorneys often have clients in several states and that local custom must be balanced against national practice in the Federal Employees' Compensation Act appeals.

<sup>7</sup> 20 C.F.R. § 501.9(e).

<sup>8</sup> *J.D.*, Docket No. 13-067, *order granting fee petition* (issued April 28, 2016)(the billed amount of unexplained conferences with attorneys and paralegals was disallowed)

**IT IS HEREBY ORDERED THAT** the fee petition is denied and may be resubmitted to the Board within 60 days of the date of this order.

Issued: August 9, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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