

- (2) The nature and complexity of the appeal;³
- (3) The capacity in which the Representative has appeared;⁴
- (4) The actual time spent in connection with the Board appeal;⁵ and
- (5) Customary local charges for similar services.⁶

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.⁷ No response was received.⁸

The requested fees pertain to services performed before the Board in the above-referenced appeal. In the decision dated October 8, 2015, the Board set aside OWCP's November 14, 2014 decision. The case was remanded for OWCP to request clarification from Dr. William P. Curran, a second opinion Board-certified orthopedic surgeon, addressing appellant's period of disability.

On appeal counsel submitted a seven-page brief addressing the issues on appeal. He cited a number of Board decisions in support of his arguments. Counsel also identified and argued medical evidence to challenge OWCP's denial of wage-loss compensation.

OWCP's decision on appeal was dated November 14, 2014, the appeal was filed with the Board on February 27, 2015, and a supporting brief was filed with the Board on February 27, 2015. The fee petition requests approval of time from December 5, 2014 through October 15, 2015 and documents 12.9 hours spent in connection with this appeal before the Board at \$425.00 per hour for Daniel M. Goodkin, Esquire, \$525.00 per hour for Steven E. Brown, Esquire, and \$195.00 per hour for Paralegal Erika Bauer.

In his petition, counsel addressed the exact amounts that were being claimed for work before the Board, and provided a statement of service detailing the fee agreement between

³ 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 attorney must establish the complex or unusual nature of the appeal.

⁴ 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.

⁵ 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).

⁶ 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.

⁷ 20 C.F.R. § 501.9(e).

⁸ The Board notes that included with counsel's fee petition was a signed statement from appellant indicating that he agreed with the requested fee.

appellant and counsel, which appellant signed on October 26, 2015. Counsel addressed the usefulness of his services noting that he was successful in his argument, as the Board had set aside OWCP's decision and remanded for clarification of the second opinion physician's opinion. He specifically addressed the hourly rates charged by the staff of his law firm.

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 based on the hourly rates noted in the fee agreement between Mr. Goodkin and appellant.

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 up to a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$4,419.50.⁹

Issued: June 22, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

⁹ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015 and did not participate in the preparation of this order.