

Pursuant to its regulations, the Board considered the petition under the following general criteria:

- (1) The usefulness of the Representative's services;⁴
- (2) The nature and complexity of the appeal;⁵
- (3) The capacity in which the Representative has appeared;⁶
- (4) The actual time spent in connection with the Board appeal;⁷ and
- (5) Customary local charges for similar services.⁸

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.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether OWCP properly found an overpayment in the amount of \$24,599.22 and whether OWCP properly denied waiver of the overpayment. By decision dated October 7, 2014, an OWCP hearing representative affirmed the finding of an overpayment and denial of waiver. By decision dated July 13, 2015, the Board affirmed the October 7, 2014 decision.

OWCP's decision on appeal was dated October 7, 2014 and the appeal was filed with the Board on March 25, 2015. On July 24, 2015 counsel provided a fee petition and a statement of service requesting approval of fees totaling \$962.67. The fee petition requests approval of services from December 4, 2014 to July 22, 2015, for 5.07 hours at \$185.00 per hour.

The Board notes that for July 22, 2015 counsel included a fee of \$24.72 for mail expense. This is considered a matter between counsel and a client that is not within the purview of the

⁴ 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 by the representative 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.

⁵ 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.

⁶ 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.

⁷ The Board's evaluation of a representative'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).

⁸ 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 Federal Employees' Compensation Act appeals.

⁹ 20 C.F.R. § 501.9(e). Appellant did not respond to an August 20, 2015 letter requesting comment regarding the fee application.

Board. Counsel also noted .42 hours of proofreading the fee petition on July 22, 2015. This claimed fee does not pertain to counsel's furtherance of the appeal before the Board. Therefore the Board will disallow the \$77.70 fee for proofreading the fee petition.

The Board has carefully reviewed the fee petition and finds it, as modified, otherwise satisfies the requirements of 20 C.F.R. § 501.9(e). The Board will therefore approve the fee in the amount of \$860.25.

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 \$860.25.¹⁰

Issued: December 14, 2017
Washington, DC

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

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

¹⁰ Colleen Duffy Kiko, Judge, participated in the preparation of the order, but was no longer a member of the Board effective December 11, 2017.