



- (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. In a merit review decision dated June 25, 2015, the Office of Workers' Compensation Programs (OWCP) found that an April 2, 2015 report from Dr. Jack Rook, a Board-certified physiatrist, was of diminished probative value as he had discussed work activities prior to 2008. By decision dated November 16, 2016 decision, the Board remanded the case to OWCP for it to properly review the evidence of record, including the April 2, 2015 report from Dr. Rook. The underlying issues in the case were whether appellant's left shoulder and cervical conditions were employment related.

In support of the appeal, counsel submitted an 18-page brief with supporting legal citation in support of his arguments that appellant's conditions were causally related to employment factors. As noted, the Board remanded the case for further review of the medical evidence.

Counsel submitted a fee petition requesting approval of \$6,452.50 for the period November 18, 2015 to June 9, 2016. The petition documents 21.55 hours spent in connection with the appeal before the board at \$300.00 an hour for 21.45 hours for John S. Evangelisti, Esq. at \$6,435.00 and \$175.00 an hour for .10 hours for Paralegal Jodi Waldron at \$17.50. The fee petition described the specific services provided for the amount claimed.

In this regard, however, the Board finds billing for 3.50 hours on January 11, 2016 to "Draft ECAB brief" to be inappropriate as the counsel had already billed 17.60 hours between

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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 FECA appeals.

<sup>9</sup> 20 C.F.R. § 501.9(e).

<sup>10</sup> The Board notes that included with counsel's fee petition was a signed statement from appellant indicating that she found the requested fee to be reasonable and appropriate.

the dates of December 16 and 21, 2015 and the brief was filed electronically with the Board on December 21, 2015. Therefore the Board will disallow 3.50 hours at \$300.00 an hour in the amount of \$1,050.00 as excessive and redundant. The Board has carefully reviewed the fee petition, and finds that, as modified, it otherwise 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 up to a year or both.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$5,402.50.

Issued: December 7, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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