

Pursuant to its regulation, the Board considered the fee petition under the following 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 No response was received.¹⁰

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying merit issue was whether appellant, a widow, met her burden of proof to establish that the death of her husband, a federal employee, was causally related to factors of his federal employment. In merit decisions dated September 10 and December 11, 2015, the Office of Workers' Compensation Programs (OWCP) denied the claim, finding the medical evidence insufficient to establish that the employee's death was employment related.

On appeal counsel submitted an eight-page brief presenting the facts and Board precedent in similar cases. He argued that the record established that the employee encountered work-related stress and that a conflict in medical evidence had been created regarding whether stress contributed to his death.

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 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 was obtained.

⁷ 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).

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 FECA appeals.

⁹ 20 C.F.R. § 501.9(e).

¹⁰ Included with counsel's fee petition submitted to the Board was a December 30, 2016 statement by appellant that the fees requested were reasonable.

Counsel provided a fee petition and statement of service before the Board on January 10, 2017. OWCP's decisions on appeal were dated September 10 and December 11, 2015 and the appeal was filed with the Board on February 12, 2016. The Board issued its decision on December 9, 2016. The fee petition requests approval of time from February 8, 2016 through December 15, 2016 and documents 6.6 total hours spent in connection with this appeal before the Board at \$475.00 per hour for 3.4 hours for Daniel M. Goodkin, Esquire for a total of \$1,615.00, and \$195.00 an hour for 3.2 hours for Paralegal Erika Bauer for a total of \$624.00.

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.¹¹

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 \$2,239.00.¹²

Issued: December 28, 2017
Washington, DC

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

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

¹¹ The Board notes that a fee agreement should always accompany a fee petition submitted to the Board for approval.

¹² Colleen Duffy Kiko, Judge, participated in the preparation of this order, but was no longer a member of the Board effective December 11, 2017.