

- (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. By decision dated December 1, 2015, the Office of Workers' Compensation Programs (OWCP) found that appellant did not meet his burden of proof to establish a compensable employment factor of excessive work load or that such work load was the cause of appellant's emotional or cardiac conditions. By decision dated February 24, 2017, the Board affirmed the December 23, 2015 decision of OWCP. With respect to the claimed emotional and cardiac conditions, the Board found that appellant voluntarily engaged in nonmandatory overtime work and did not establish any of the claimed work factors which he believed caused him to develop an emotional condition.

On appeal counsel submitted a four-page brief, which addresses the factual history of the case and presents Board precedent regarding the establishment of work-related cardiac and emotional conditions. He argued that working overtime, even voluntarily, constitutes a compensable factor of employment. Counsel also argued, with respect to the claimed emotional and cardiac conditions, that the medical evidence of record establishes that the overtime work

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 The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that the requested fee of \$1,516.00 was reasonable and appropriate. Appellant expressed his understanding that he was responsible for payment of the fee.

hours contributed and worsened the conditions. He requested that appellant's claim be accepted for the claimed orthopedic and emotional conditions.

By letter dated March 6, 2017, counsel provided a fee petition and a statement of service requesting approval of fees totaling \$1,398.50.

OWCP's decision on appeal was dated December 1, 2015 and the appeal was filed with the Board on May 13, 2016. The fee petition requests approval of time from May 12, 2016 to June 1, 2016 and documents 4.3 hours spent in connection with this appeal before the Board at \$475.00 per hour for 2.0 hours for Daniel M. Goodkin, Esq., and \$195.00 per hour for 2.3 hours for Paralegal Erika Bauer. The fee petition described the specific services provided for the amount claimed.

The Board has carefully reviewed the fee petition, and finds that it 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 \$1,516.00.¹¹

Issued: September 19, 2019
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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