



- (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. The Board notes that in its decision dated March 9, 2017, it set aside the Office of Workers' Compensation Programs' (OWCP) January 4, 2016 decision finding that the case was not in posture for decision and remanded the case for further medical development regarding whether appellant developed a lumbar condition causally related to factors of his federal employment.

On appeal counsel submitted a five-page brief addressing the issues on appeal. He cited legal authorities in support of his arguments and identified and argued medical evidence to challenge OWCP's decision denying appellant's occupational disease claim.

On April 11, 2017 counsel provided a fee petition addressing the usefulness of his services based on the nature and complexity of the claim and actual time spent on development and representation of the claim. Counsel discussed his communication with appellant during his representation before the Board and addressed the customary local charges for similar services. He provided a time and expense statement which specifically addressed the hourly rates charged by him during his representation.

OWCP's decision on appeal was dated January 4, 2016 and the appeal was filed with the Board on May 17, 2016. The fee petition requests approval of time from April 20, 2016 through March 13, 2017 and documents 5.00 hours spent in connection with this appeal before the Board. The fee petition documents the fees as \$475.00 per hour for 2.50 hours for Daniel M. Goodkin,

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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 the representative's fee petition was a signed statement from appellant indicating that she agreed with the requested fee for services rendered.

Esquire for a total \$1,187.50, and \$195.00 per hour for 2.50 hours for Paralegal Erika Bauer for a total of \$487.50. The statement is clear and detailed, and counsel has personally affirmed the correctness of the fee.

The Board has reviewed the fee petition and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulations. The Board after review of the petition 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 19 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 \$1,675.00.<sup>11</sup>

Issued: December 14, 2017  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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