

Pursuant to its regulations, 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. By decision dated August 19, 2016, the Office of Workers' Compensation Programs (OWCP) found that appellant had not met his burden of proof to establish work-related emotional conditions. On November 18, 2016 appellant, through counsel, appealed to the Board. On appeal counsel submitted a seven-page brief which addressed the factual history of the case and presented Board precedent regarding the establishment of work-related emotional conditions. He argued that the medical evidence of record was sufficiently rationalized to establish a compensable emotional condition. By decision dated March 16, 2018, the Board affirmed the August 19, 2016 OWCP decision finding that appellant had not met his burden of proof to establish an emotional condition in the performance of duty as he failed to establish a compensable factor of his federal employment.

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 The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that the requested fee of \$2,387.50 was reasonable and appropriate. Appellant expressed his understanding that he was responsible for payment of the fee.

By letter dated April 9, 2018, counsel provided a fee petition and a statement of service requesting approval of fees totaling \$2,387.50. The fee petition requests approval of time from October 5, 2016 through March 22, 2018 and documents a total of 7.3 hours spent in connection with this appeal before the Board. This includes 2.6 hours at \$475.00 per hour and .8 hours at \$490.00 per hour for Daniel M. Goodkin, Esq., and 3.9 hours at \$195.00 per hour for Paralegal Erika Bauer. The fee petition describes 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 therefore concludes that the fees requested are 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 \$2,387.50.

Issued: January 16, 2020
Washington, DC

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

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

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