



Pursuant to its regulation, the Board considers fee petitions under the following criteria:

- (1) The usefulness of the Representative's services;<sup>5</sup>
- (2) The nature and complexity of the appeal;<sup>6</sup>
- (3) The capacity in which the Representative has appeared;<sup>7</sup>
- (4) The actual time spent in connection with the Board appeal;<sup>8</sup> and
- (5) Customary local charges for similar services.<sup>9</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>10</sup> No response was received.<sup>11</sup>

By order dated August 27, 2014, the Board denied counsel's fee petition as it had failed to adequately delineate the services performed and otherwise failed to explain in detail how the claimed fee justified under the five factors listed above. Counsel was permitted 60 days to resubmit the fee petition.

On September 29, 2014 counsel submitted a supplemental fee petition limiting the scope of the initial request and clarifying other aspects of the fee petition.<sup>12</sup> The requested fees pertain to services performed before the Board in the above-referenced appeal, which involved a November 15, 2010 merit decision and an April 7, 2011 nonmerit decision denying reconsideration. The underlying merit decision involved the denial of wage-loss compensation

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<sup>5</sup> 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.

<sup>6</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>7</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>8</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>9</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>10</sup> 20 C.F.R. § 501.9(e).

<sup>11</sup> The September 4, 2012 fee petition was accompanied by an August 27, 2012 signed statement from appellant expressing his belief that the fees charged by counsel were reasonable.

<sup>12</sup> The initial fee petition also included charges for services related to an August 17, 2011 decision, which was the subject of a separate appeal. Docket No. 11-2106 (issued September 12, 2012). Those particular charges covered the period August 26 through November 3, 2011.

beginning July 21, 2005. Appellant's representative filed the appeal on April 29, 2011, and subsequently submitted an 18-page brief.<sup>13</sup> The Board issued its decision on August 15, 2012, which set aside the November 15, 2010 decision, and remanded the case for further consideration.<sup>14</sup>

With respect to the current appeal, the fee petition requests approval of time from May 2 to June 3, 2011, and documents 35.7 hours spent in connection with this appeal before the Board for a total of \$8,415.00. Appellant's lead counsel, John S. Evangelisti, Esq., billed his services (5.1 hours) at an hourly rate of \$300.00. Additionally, Christopher Lopez, Esq. billed his services (30.6 hours) at \$225.00 per hour. A substantial portion of the time billed was devoted to reviewing appellant's two claim files and preparing the 18-page brief, which counsel submitted to the Board in early June 2011. Appellant's counsel represented that there was a written fee agreement. He also indicated that the hourly rates he and co-counsel charged appellant were both reasonable and customary, and had previously been approved in similar cases.

Regarding the nature and complexity of the case, counsel's brief pointed out errors with respect to OWCP's merit and non-merit decisions. He also explained how the referee's opinion demonstrated that appellant was unable to perform his date-of-injury position due to his accepted lumbar condition. Lastly, counsel demonstrated how appellant's modified assignment accommodated his emotional condition, but not his lumbar condition. The Board agreed with counsel that appellant was disabled due to his employment-related lumbar condition. As to the usefulness of counsel's services, he noted that he regularly apprised appellant of the status of his claim and kept him fully informed. Counsel also noted that he was successful on appeal, and ultimately successful on remand, which resulted in a substantial award of compensation retroactive to July 22, 2005.

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.

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.

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<sup>13</sup> Counsel submitted his brief on June 3, 2011, which the Board received on June 10, 2011.

<sup>14</sup> The Board found that the evidence supported appellant's claimed disability on or after July 21, 2005. However, it was not entirely clear from the record whether appellant had already been compensated for the claimed period under his emotional condition OWCP File No. xxxxxx905. Accordingly, the Board remanded the case to OWCP for verification of any previous wage-loss compensation paid to appellant.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of \$8,415.00.

Issued: April 18, 2017  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board