

On April 17, 2014 counsel provided to the Board a memorandum supplementing his fee petition, providing additional information for consideration of the fee request pursuant to 20 C.F.R. § 501.9(e). He noted that appellant was not paid any wage-loss benefits in this case until after the Board remanded the case to OWCP. Counsel contended that the Board's order was critical in forcing OWCP to consider evidence that it had steadfastly refused to consider. He provided a copy of a document in which OWCP had approved previous attorney fee petitions on the sole basis that appellant had agreed to pay him for his services at the rate of \$450.00 per hour. Counsel also noted that there is no customary local charge for services before the Board and that counsel has a national practice representing clients throughout the United States and overseas. He contended that appellant's claim was extremely complex "due to the mendacity of OWCP personnel who refused to pay [appellant]."

As required by the Board's regulations, appellant was afforded written notice of the fee requested and provided an opportunity to comment on the fee petition. Although no response was received, the record does include a copy of the itemized statement of fees charged which has been signed by appellant.

Under the Board's *Rules of Procedure*, the Board must consider counsel's fee petition under the following general criteria:

- (1) The usefulness of the Representative's services;²
- (2) The nature and complexity of the appeal;³
- (3) The capacity in which the Representative has appeared;⁴
- (4) The actual time spent in connection with the Board appeal;⁵ and
- (5) Customary local charges for similar services.⁶

² The Board's consideration of "usefulness" includes, but is not limited to, the frequency and quality of communication by the attorney with the client, the factual evidence and legal argument offered by the attorney, and written pleadings filed in the case. The Board will also consider the usefulness of an attorney's work as it aided the Board in its consideration and decision of the issue appealed.

³ 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 attorney must establish the complex or unusual nature of the appeal.

⁴ The Board's consideration of the "capacity" in which an attorney appears includes, but is not limited to, whether the attorney obtained a written retainer and fee agreement.

⁵ The Board's evaluation of an attorney's 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 counsel 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).

⁶ The Board's consideration of customary, local fees recognizes that attorneys often have clients in several states and that local custom must be balanced against national practice in the Federal Employees' Compensation Act appeals.

The Board notes that the bulk of the fees in this case (\$11,430.00) are itemized for the preparation of a 16-page pleading submitted on appeal.⁷ The Board has carefully reviewed counsel's submissions requesting for approval of fees and finds that the fees charged in this instance are excessive given the time spent, the usefulness of the representation, and the complexity of the matter on appeal.

As to the time spent and usefulness of the representation, the Board recognizes that counsel's pleading summarized a lengthy factual history. However, counsel was likely already intimately aware of the facts of the case through his representation of appellant before OWCP.⁸ Further, his pleading consists merely of a compilation of documents photocopied from the record and pasted into the document, with short explanatory paragraphs. Although counsel's itemized statement of fees indicates that a large amount of research was performed, his pleading did not advance any legal arguments, nor did it include any citations to Board case law. The arguments presented centered primarily on the failure of OWCP to properly handle the case and the argument that OWCP had "rendered numerous shoddy decisions in the history of this case." Counsel claimed that "any weakness in the medical evidence over the years in this case should be resolved in favor of [appellant] in light of the multitude of bad decisions that bear no connection to the medical reports and the failure of OWCP to provide her with wage loss and medical care in a timely manner."

As to the complexity of the matter on appeal, the issue before the Board was not a complicated matter, as evinced by the Board's procedural remand. The appeal did not involve a novel issue, or extensive or unusual factual evidence or legal argument.

The Board finds that counsel in this instance has failed to establish adequate justification for the full amount of his fee based on the amount of time spent, and the usefulness of the representation and the complexity of this case.

The Board has reviewed the fee petition and additional information submitted by counsel and finds that it fails to satisfy the requirements of section 501.9(e) of the Board's implementing federal regulations, to the extent noted above. As such, the Board will approve a fee of \$4,950.00 in this matter. This amount represents eleven (11) hours of representative services performed at the hourly rate of \$450.00.⁹ The Board finds this amount reasonable given the particular facts of this case.

⁷ Counsel's itemized statement of fees notes entries dated December 11 through 26, 2012 for time spent reviewing the file from OWCP, researching, drafting a letter to ECAB (the Board presumes that this document resulted in the December 26, 2012 pleading since no other December 2012 correspondence is found in the record), and drafting/finalizing ECAB memorandum, totaling 25.3 hours at \$450.00 per hour.

⁸ In fact, the fee agreement submitted to the Board for approval also noted over \$18,225.00 in additional attorney fees itemized for work performed before OWCP.

⁹ This includes one hour to draft the appeal and memorandum to file; nine hours to review the file from OWCP, perform any necessary research, and prepare the pleading; and one hour to review the ECAB decision with memorandum to file.

IT IS HEREBY ORDERED THAT that the fee petition is granted in the amount of four thousand, nine hundred and fifty dollars (\$4,950.00).¹⁰

Issued: November 3, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

¹⁰ Richard J. Daschbach, Chief Judge, who participated in the preparation of the opinion, was no longer a member of the Board after May 16, 2014.