

Pursuant to its regulation, the Board considers fee petitions 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 regulation, 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 September 10, 2015, the Board set aside OWCP's October 8, 2013 decision, which affirmed a February 7, 2011 denial of appellant's claim for a recurrence of disability commencing December 12, 2005. The Board remanded the case for further development of the factual evidence regarding whether the employing establishment had withdrawn appellant's light-duty position.

On appeal counsel submitted a five-page brief addressing the factual history of the case and citing legal authorities in support of his arguments, including section 2.1500.7(a)(4) of the OWCP procedure manual¹¹ regarding the withdrawal of light-duty work with no previous loss of wage-earning capacity determination. He argued that the employing establishment withdrew appellant's light-duty work in December 2005 in the absence of a reduction-in-force or a loss of

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 FECA appeals.

⁹ 20 C.F.R. § 501.9(e).

¹⁰ The Board notes that included with the counsel's fee petition was a signed statement from appellant indicating that he found the requested fee to be reasonable and appropriate.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.7(a)(4) (June 2013).

wage-earning capacity decision based on appellant's light-duty job. Counsel also argued that appellant was unable to perform the regular work duties of his date-of-injury position as his physicians opined that he could only work with accommodations.

OWCP's decision on appeal was dated October 8, 2013 and the appeal and supporting brief were filed with the Board on March 25, 2014. The fee petition requests approval of time from October 15, 2013 through September 10, 2015 and documents 1.10 hours spent in connection with this appeal before the Board at \$425.00 per hour for Daniel M. Goodkin, Esquire, and 5.0 hours at \$195.00 per hour each for Paralegals Erika E. Bauer and Jessica Gordon.

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 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 \$1,442.50.

Issued: August 22, 2016
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