

Pursuant to its regulation, 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. In a December 31, 2015 letter, appellant indicated that he considered the requested fee in the amount of \$2,100.00 to be fair and reasonable.⁹

The requested fees pertain to services performed before the Board in the above-referenced appeal. In its decision dated June 13, 2016, the Board affirmed the April 1, 2015 decision of OWCP. The Board found that appellant had not met his burden of proof to establish that the December 13, 2010 employment incident caused or aggravated his diagnosed medical conditions.

On appeal counsel submitted a 24-page brief with supporting legal citation in support of his appeal, citing pertinent case law in support of his arguments. He argued that OWCP should have accepted an aggravation or exacerbation of appellant's multiple conditions. Counsel provided a factual history of the claim and offered alternative arguments in support of his position. He also argued that appellant suffered new medical conditions resulting from the December 13, 2010 work incident and that the medical evidence of record supported his multiple conditions.

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 The Board notes that included with the representative's fee petition was a signed statement from appellant indicating that he agreed with the requested fee for services rendered.

OWCP's decision on appeal was dated April 1, 2015 and the appeal was filed with the Board on September 28, 2015. The fee petition requests approval of time from June 19 through September 28, 2015. It documents .60 hours at \$300.00 per hour on December 26, 2014 for "review and corrections" for a total of \$180.00 and 8.0 hours at \$325.00 per hour on September 25, 2015 for "Draft ECAB brief" for a total of \$2,600.00. This amounted to a total of \$2,780.00. There were additional charges listed for December 26, 2014 (\$180.00) which would not have been related to the appeal before the Board because the OWCP decision did not issue until April 1, 2015. Therefore, that amount would be disallowed. Counsel, however, discounted the total fee from \$2,780.00 to \$2,100.00.

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.¹⁰

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 \$2,100.00.¹¹

Issued: December 18, 2017
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁰ The Board notes, however, that the fee agreement should always be provided when filing a fee petition with the Board.

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