

- (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. The underlying issue was an August 24, 2010 claim for recurrence of disability. By decision dated April 24, 2015, the Office of Workers' Compensation Programs' (OWCP) Branch of Hearings and Review affirmed an August 5, 2014 decision which denied appellant's claim for recurrence finding that the evidence was insufficient to establish that appellant was disabled due to a material change or worsening of her work-related conditions. In a June 14, 2016 decision, the Board affirmed the April 24, 2015 OWCP decision.

On appeal, counsel submitted a six-page brief contending that the evidence and argument submitted to OWCP had been sufficient to establish that appellant sustained a recurrence of disability as of August 24, 2010 based on the acceptance of new conditions. He addressed the usefulness of his services noting that the case was complex and dated back to 1983. Counsel noted that although not successful before the Board, appellant was advised that this was a difficult appeal. He discussed his communication with appellant during the representation before the Board and addressed the customary local charges for similar services. Counsel specifically addressed the hourly rates charged by the staff of his law firm, noting that they had been found reasonable in other administrative tribunals.

OWCP's decision on appeal was dated April 24, 2015 and the appeal was filed with the Board on October 14, 2015. The fee petition requests approval of time from October 22, 2015 to June 15, 2016 and documents 16.25 hours spent in connection with this appeal before the Board

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 counsel's fee petition was a signed fee agreement from appellant.

at \$200.00 per hour for John S. Evangelisti, Esq., and \$50.00 per hour for Paralegal Jodi Waldron.

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 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."

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$3,205.00.

Issued: November 16, 2017
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