

Under these regulations, the Board must consider the petition under the following general 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.⁹ No response was received from appellant. Included with counsel's fee petition, however, was a signed statement of service from appellant, indicating that the requested fee of \$1,315.50 was reasonable and appropriate.

The requested fees pertain to services performed before the Board in the above-referenced appeal. On appeal counsel submitted a five-page brief presenting the facts and Board precedent in similar cases. By decision dated November 6, 2018, the Board found that the case was not in posture for decision and set aside the April 10, 2017 decision of the Office of Workers' Compensation Programs.

On January 11, 2019 counsel filed a fee petition, requesting approval of fees totaling \$1,315.50. The fee petition requests approval of services from May 15, 2017 through November 6, 2018 and documents 5.55 total hours spent in connection with this appeal before the Board. This includes 0.25 hours at \$560.00 per hour and 0.40 hours at \$550.00 per hour for Steven E. Brown, Esq., and 4.90 hours at \$195.00 per hour for Erika Bauer, paralegal. The fee petition describes the specific services provided for the amount claimed.

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.

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. *Supra* note 3.

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 *Supra* note 3.

The Board has reviewed the fee petition, and finds that it satisfies the requirements of section 501.9(e) of the Board's *Rules of Procedure*.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.”¹¹ Under 18 U.S.C. § 292, collecting a fee without the approval of the Board may constitute a misdemeanor, subject to fine or imprisonment up to one year, or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$1,315.50.

Issued: January 17, 2020
Washington, DC

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

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

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

¹⁰ *Id.*

¹¹ *Id.*