



- (2) The nature and complexity of the appeal;<sup>5</sup>
- (3) The capacity in which the Representative has appeared;<sup>6</sup>
- (4) The actual time spent in connection with the Board appeal;<sup>7</sup> and
- (5) Customary local charges for similar services.<sup>8</sup>

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. No response was received.<sup>9</sup>

The requested fees pertain to services performed before the Board in the above-referenced appeal. The underlying issue was whether the Office of Workers' Compensation Programs (OWCP) properly denied appellant's request for further merit review pursuant to 5 U.S.C. § 8128(a). In a nonmerit decision dated March 31, 2017, OWCP denied review of the merits of the case. By decision dated November 13, 2017, the Board set aside OWCP's March 31, 2017 decision. The Board found that OWCP did not follow its procedures regarding the content of a nonmerit decision.

On appeal, counsel had submitted a four-page brief addressing the factual and medical history of the case and presented Board precedent and OWCP procedures regarding requirements for merit review and the merit issue in this case, whether appellant established a recurrence of disability. He argued that OWCP erred in denying merit review and that the evidence submitted established a recurrence of disability.

On December 18, 2017 counsel provided a fee petition and statement of service.

OWCP's decision on appeal was dated March 31, 2017, and the appeal was filed with the Board on May 9, 2017. The Board issued its decision on November 13, 2017. The fee petition requests approval of time from May 8 through November 17, 2017 and documents 2.30 hours spent in connection with this appeal before the Board at \$475.00 an hour for Daniel M. Goodkin, Esq. on May 8, May 9, and November 17, 2017; and 0.60 hours at \$195.00 per hour for Paralegal

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> 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.

Jessica Duncan on May 9, May 22, and November 17, 2017. The fee petition described the specific services provided for the amount claimed.

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 \$1,209.50.

Issued: April 13, 2022  
Washington, DC

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

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