



The documents on appeal include a one-page attachment to appellant's AB-1 form addressing the issue on appeal. Counsel cited to two decisions of the Board in support of his contention that the evidence was not properly developed as to whether appellant had the physical capacity to commute or perform the modified duties. In citing *B.O.*,<sup>2</sup> he contended that OWCP failed to establish that appellant had the capacity of getting to work by private or public transportation. Citing to *Billy H. Bryant*,<sup>3</sup> counsel noted that the length of a commute was a factor to be considered in determining whether a job was suitable. On May 29, 2013 he submitted an addendum to the appeal, citing *W.F.*,<sup>4</sup> in support of the proposition that OWCP bears the burden of proof that an employee is capable of travelling to and from the workplace prior to terminating benefits. Counsel addressed appellant's testimony regarding her commute. As noted, the Board found that further development of the medical evidence was necessary on appellant's physical restrictions and ability to commute.

On April 8, 2014 counsel responded to the Board's April 2, 2014 order providing additional information for consideration of the fee request pursuant to 20 C.F.R. § 501.9(e). He noted that appellant did not contest the amount of the fee.<sup>5</sup> He addressed the usefulness of the representative services noting he submitted legal argument in the claim with citation to Board precedent that was found relevant to the issue on appeal as OWCP had failed to determine whether appellant's condition prevented her travelling to and from work. Counsel noted that this was the second appeal of the case to the Board and that he was successful in his argument, as the Board remanded the case for further development of the claim. He also addressed the time submitted in the fee petition on the case, in communication with appellant and addressed the customary local charges for similar services. Counsel specifically addressed the hourly rates charged by the staff of his law firm in this appeal.

The Board has duly considered the matter and finds that the petition sufficiently documents the work performed on behalf of appellant except to the inclusion of billings on December 12, 2012, March 28 and June 5, 2013. In each instance, there were multiple billings by Mr. Goodkin, Ms. Bauer and Mr. Brown under the category of review of file for status meeting and office meeting for case status. The amount billed on December 12, 2012 was \$81.50 for .5 hours. The amount billed on March 28, 2013 was \$155.00 for .5 hours. The amount billed on June 5, 2013 was \$155.00 for .5 hours. The Board will disallow these 1.5

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<sup>2</sup> *B.O.*, Docket No. 07-103 (issued May 2, 2007). The Board notes that the issue in this case was a recurrence of disability for which appellant has the burden of proof and not a loss of wage-earning capacity as in *B.O.*

<sup>3</sup> Docket No. 02-1014 (issued November 6, 2003). The Board reversed a termination decision of OWCP finding that the medical evidence established that the proposed daily commute to the job site exceeded the employee's physical restrictions.

<sup>4</sup> Docket No. 10-1828 (issued May 13, 2011).

<sup>5</sup> Counsel cited to the provisions of the FECA Procedure Manual, Chapter 2.1200.6 and inquired as to whether they pertain to uncontested fees for work performed before the Board. The procedures implemented by OWCP with regard to the consideration of fees for services are separate from the Board's review of such applications under section 501.9(e). OWCP and the Board are two separate and distinct bodies and separate application to the Board is required for approval of a fee for legal or other services performed in connection with an appeal. *Evelyn R. Adams*, 10 ECAB 585 (1959).

hours as excessive and redundant.<sup>6</sup> Deducting \$391.50 from the fee petition, the Board finds that it otherwise satisfies the requirements of section 501.9(e) of the Board's implementing federal regulations.

**IT IS HEREBY ORDERED THAT** the fee petition is granted in the amount of one thousand, four hundred and ninety-seven dollars (\$1,497.00).

Issued: August 25, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> While not directly pertaining to claims under FECA, the Board finds instructive the decision of the United States Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424 (1983). In any fee petition, counsel must use billing judgment and exclude redundant or unnecessary hours and to confirm that the fee requested is not excessive. Adequate documentation should be submitted to support the hours of work performed with specificity or a reasonably precise description of the work performed on behalf of the client.