

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.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 whether appellant sustained an emotional condition in the performance of duty. By decision dated June 10, 2015, the Board affirmed OWCP's January 9, 2014 denial of her claim as she had failed to establish a compensable factor of employment. Counsel filed a petition for reconsideration with the Board on June 12, 2015 which the Board denied on January 20, 2016.

On appeal counsel submitted a four-page brief arguing that appellant had established a compensable factor of employment under FECA. In the petition for reconsideration, he submitted a two-page brief citing Board case law and again arguing that she had demonstrated a compensable work factor.

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 20 C.F.R. § 501.9(e).

¹⁰ The Board notes that included with the counsel's fee petition was a signed statement from appellant indicating that she found the requested fee to be reasonable and appropriate.

Counsel, on February 22, 2016, submitted a fee petition providing an itemized description of the professional services rendered and the hourly rates charged. OWCP's decision on appeal was dated January 9, 2014. The appeal was filed as received by the Board on February 26, 2014. The fee petition requests approval of time from January 30, 2014 through January 21, 2016 and documents 9.9 hours spent in connection with this appeal before the Board at \$425.00 for four hours for Daniel M. Goodkin, Esq., and \$195.00 5.90 hours for Paralegals Erika Bauer and Jessica Gordon. Counsel submitted a signed statement of service from appellant agreeing the requested fee was reasonable and appropriate.

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 \$2,850.50.

Issued: August 11, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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