

- (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 On January 11, 2018 the Clerk of the Appellate Board's received a statement signed on December 30, 2017 in which appellant indicated that the requested fee of \$4,077.00 was reasonable and appropriate. Appellant expressed his understanding that he was responsible for payment of the fee.

The requested fees pertain to services performed before the Board in the above-referenced appeal. By decision dated May 29, 2015, the Office of Workers' Compensation Programs (OWCP) found that appellant had not met his burden of proof to establish total disability causally related to his accepted employment injuries. By decision dated September 2, 2015, OWCP denied appellant's request for reconsideration. Appellant, through counsel, filed an appeal to the Board on October 14, 2015 and submitted a seven-page brief citing to legal precedent in support of the argument that appellant was entitled to wage-loss compensation for the period claimed. By decision dated May 18, 2016, the Board affirmed the September 2 and May 29, 2015 decisions. Counsel subsequently filed a six-page petition for reconsideration on May 31, 2016. By order dated August 29, 2017, the Board denied the petition for reconsideration.

On January 11, 2018 counsel provided a fee petition requesting approval of fees totaling \$4,077.00. The fee petition requests approval of services from September 10, 2015 to November 2, 2017 and documents 11.00 hours spent in connection with this appeal before the Board. It itemizes the services as 6.90 hours at \$475.00 per hour for Daniel M. Goodkin, Esq. and 4.10 hours at \$195.00 per hour for paralegal Erika Bauer. The fee petition describes the specific services provided for the amounts of time claimed.

The Board has carefully reviewed the fee petition, and finds that it satisfies the requirements of section 501.9(e) of the Board's implementing regulations. The Board concludes that the fee requested is reasonable.

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).

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 up to a year or both.

IT IS HEREBY ORDERED THAT the fee petition is granted in the amount of \$4,077.00.¹⁰

Issued: January 7, 2020
Washington, DC

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

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

¹⁰ Colleen Duffy Kiko, Judge, participated in the Board’s May 18, 2016 decision and the August 29, 2017 *Order Denying Petition for Reconsideration*, but was no longer a member of the Board effective December 11, 2017.