



BRB Nos. 18-0260 BLA and 18-0416 BLA  
Case Nos. 2013-BLA-06020 and 2016-BLA-05391

CHARLENE GALE KILGORE <sup>1</sup>	)	
(o/b/o and Survivor of JUDY WAGNER)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
GUEST MOUNTAIN MINING	)	
CORPORATION	)	
	)	
and	)	DATE ISSUED: 11/09/2019
	)	
CHARTIS CASUALTY COMPANY	)	
	)	
Employer/Carrier-	)	
Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	ORDER AWARDING AN
Party-in-Interest	)	ATTORNEY'S FEE

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<sup>1</sup> This case involves Employer's appeals of the ALJ's award of benefits in both the miner's and survivor's claims. The Miner, Joe H. Wagner, died on December 22, 2015, Claimant's Exhibit 4, and the Miner's widow, Judy Wagner, died on March 3, 2019. In her "Motion to Substitute Parties and Change Case Caption," Claimant, the daughter of the widow, requests that she be added as a party in both the miner's and survivor's claims. The request is granted and the caption is amended accordingly. See 20 C.F.R. §725.360(b).

Claimant's counsel filed an itemized petition requesting an attorney's fee for legal services performed in these appeals pursuant to 20 C.F.R. §802.203. *Wagner v. Guest Mountain Mining Corp.*, BRB Nos. 18-0260 BLA and 18-0416 BLA (Oct. 22, 2019) (unpub.). Counsel requests a fee of \$1,850.00 representing 1.25 hours of attorney services performed by Joseph E. Wolfe at the hourly rate of \$350.00; 5.75 hours of attorney services performed by Brad A. Austin at the hourly rate of \$200.00; 0.25 hour of attorney services performed by Rachel Wolfe at the hourly rate of \$150.00; and 2.25 hours of legal assistant services at the hourly rate of \$100.00. Employer objects to the hourly rates requested by Mr. Wolfe, Mr. Austin, Ms. Wolfe, and the legal assistants, and requests the hourly rates be reduced to \$300.00, \$150.00, \$100.00, and \$50.00, respectively.

In support of his fee petition, counsel provided a list of black lung cases in which the Office of Administrative Law Judges, the Benefits Review Board, and the United States Court of Appeals for the Fourth Circuit awarded Mr. Wolfe an hourly rate of \$350.00. Moreover, the list includes cases in which Mr. Austin and Ms. Wolfe received the hourly rates of \$200.00 and \$150.00, respectively, and the legal assistants received the hourly rate of \$100.00.

The United States Court of Appeals for the Fourth Circuit has recognized that evidence of fees received in the past may be an appropriate consideration in establishing a market rate. *E. Assoc. Coal Corp. v. Director, OWCP [Gosnell]*, 724 F.3d 561, 572 (4th Cir. 2013); *Westmoreland Coal Co. v. Cox*, 602 F.2d 276, 290 (4th Cir. 2010). Thus, we find the hourly rate of \$350.00 for Mr. Wolfe, \$200.00 for Mr. Austin, \$150.00 for Ms. Wolfe, and \$100.00 for the legal assistants to be reasonable based on the evidence submitted and the prevailing market rate in the area.

We also find the overall attorney's fee request to be reasonable and commensurate with the necessary services performed in defending the awards of benefits. 20 C.F.R. §802.203(e).

Accordingly, we approve the requested fee of \$1,850.00, to be paid directly to Claimant's counsel by Employer. 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §802.203.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge