



BRB No. 20-0011 BLA

LAVERNE REHBEIN)	
(o/b/o of CARLYN D REHBEIN))	
)	
Claimant-Respondent)	
)	
v.)	
)	
HERITAGE COAL COMPANY, LLC)	
)	
and)	DATE ISSUED: 11/15/2022
)	
PEABODY ENERGY CORPORATION, C/O)	
UNDERWRITERS SAFETY & CLAIMS)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	ORDER ON
)	RECONSIDERATION AND
Party-in-Interest)	AWARDING A FEE

Employer and its Carrier (Employer) have filed a timely motion for reconsideration of the Benefits Review Board’s decision in *Rehbein v. Heritage Coal Co.*, BRB No. 20-0011 BLA (Mar. 15, 2022) (unpub.), affirming the award of benefits. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). Claimant and the Director, Office of Workers’ Compensation Programs (the Director), have not filed responses. After consideration of Employer’s contentions, a majority of the panel has not voted to vacate or modify the Board’s decision. Therefore, Employer’s motion for reconsideration is denied. 20 C.F.R. §§801.301(c), 802.409.

The Director has filed a motion to publish the Board’s decision. Employer has asked the Board not to publish the decision because it has filed a Motion for Reconsideration. Upon consideration of the Board’s decision and the Director’s

contentions, the Board denies the motion to publish because it has already addressed the issues in published decisions. *See Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 3-19 (October 25, 2022); *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 5-17 (Oct. 18, 2022); and *Graham v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0221 BLA, slip op. at 7-8 (June 23, 2022).

Claimant’s counsel has filed a complete itemized statement requesting an attorney’s fee for services performed before the Board. 20 C.F.R. §802.203. Counsel requests a fee of \$10,020.00, representing 7.20 hours of legal services by Thomas E. Johnson at an hourly rate of \$300.00, and 39.3 hours of legal services by Robert S. Seer at an hourly rate of \$200.00. Employer has not filed an objection to counsel’s fee petition.

The Board may only grant fees for “time spent on services performed while the appeal was pending before the Board.” 20 C.F.R. §802.203(d). As this case was not appealed to the Board until October 16, 2019, we disallow the charges for Mr. Johnson’s services on October 2, 2019 for 0.13 hours and 0.47 hours. Claimant’s Fee Petition at 154; 20 C.F.R. §802.203(d) (“A fee application shall include only time spent on services performed while the appeal was pending before the Board...”). Similarly, we disallow the charges for Mr. Seer’s services from September 13, 2019 to October 4, 2019, totaling 5.4 hours. Claimant’s Fee Petition at 176-177; 20 C.F.R. §802.203(d). The Board also disallows as clerical in nature the charges for Mr. Seer’s time on January 27, 2020 for 0.20 hours for scanning Employer’s Petition for Review to his electronic file. *See Whitaker v. Director, OWCP*, 9 BLR 1-216, 1-218 (1986); *McKee v. Director, OWCP*, 6 BLR 1-233 (1983); Claimant’s Fee Petition at 177. The Board further disallows the charges for Mr. Seer’s time on June 8, 2020 for 0.50 hours for reviewing documents related to Claimant’s survivor’s claim, and for filing Claimant’s survivor’s claim, which had not yet been filed and was not pending before the Board. 20 C.F.R. §802.203(d); Claimant’s Fee Petition at 179. Finally, the Board disallows the charges for Mr. Seer on April 24, 2022 for 0.60 hours as the associated services were performed by Justin DeLuca, whose credentials are not in the record and whose hourly rate has not been established. 20 C.F.R. §802.203(d); Claimant’s Fee Petition at 179.

In all other respects, the Board finds the fees requested to be reasonable and commensurate with the necessary services performed in defending the Miner’s award of benefits. Therefore, we award Claimant’s counsel a total fee of \$8,459.00, representing 6.73 hours of legal services at an hourly rate of \$300.00 (Thomas E. Johnson), and 32.2 hours of legal services at an hourly rate of \$200.00 (Robert S. Seer), to be paid directly to

Claimant's counsel by Employer.¹ 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

MELISSA LIN JONES
Administrative Appeals Judge

¹ The Board's award in this matter is of no precedential value given that counsel's fee petition is unopposed.