BRB No. 11-0807 BLA

CARL V. RAMEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	DATE ISSUED: 08/31/2012
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Second Decision and Order on Remand Awarding Benefits; the Addendum Second Decision and Order on Remand Awarding Benefits; the Decision and Order Awarding Attorney Fees; and the Supplemental Decision and Order Awarding Attorneys' Fees of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Paul E. Frampton (Bowles Rice McDavid Graff & Love), Charleston, West Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Second Decision and Order on Remand Awarding Benefits; the Addendum Second Decision and Order on Remand Awarding Benefits; the Decision and Order Awarding Attorney Fees; and the Supplemental Decision and Order Awarding Attorneys' Fees (2007-BLA-5320) of Administrative Law Judge Linda S. Chapman (the

administrative law judge) rendered on a subsequent claim[1] filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010)(to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*))(the Act). This case is before the Board for the third time.[2] In the last appeal, the Board vacated the administrative law judge's findings that the new evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, and that the weight of the evidence of record established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304. The Board remanded the case for the administrative law judge to reevaluate and weigh the x-ray evidence, CT scan evidence, and medical opinion evidence pursuant to 20 C.F.R. §718.304(a), (c),[3] and to fully explain the bases for her crediting or discrediting of the conflicting evidence thereunder. Relevant to 20 C.F.R. §718.304(a), the Board found no error in the administrative law judge's discounting of the x-ray reports of Drs. Wheeler and Scatarige, but vacated her credibility finding with regard to Dr. Castle's x-ray reading, and instructed the administrative law judge on remand to reconsider Dr. Castle's statements as to the absence of a large x-ray opacity; weigh Dr. Castle's interpretation with the positive x-ray interpretations of Drs. DePonte, Alexander, and Rasmussen; and determine whether the x-ray evidence supports a finding of complicated pneumoconiosis. Relevant to 20 C.F.R. §718.304(c), the Board held that substantial evidence supported the administrative law judge's discounting of Dr. Spagnolo's opinion, but instructed her to

[1] The Board previously set forth the procedural history of claimant's two prior claims. *C.V.R.* [*Ramey*] *v. Westmoreland Coal Co.*, BRB No. 08-0438 BLA (May 29, 2009)(unpub.). Claimant's second claim was finally denied on September 17, 2004, because claimant did not establish total disability. Director's Exhibit 2. Claimant filed his current claim on February 13, 2006.

[2] Claimant was initially awarded benefits on his current claim by the administrative law judge on February 25, 2008. Pursuant to employer's appeal, the Board vacated the administrative law judge's finding that the new evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. The Board held, *inter alia*, that the administrative law judge improperly shifted the burden of proof to employer. Thus, the Board vacated the administrative law judge's finding at 20 C.F.R. §725.309(d), and her findings on the merits of entitlement, and remanded the case for further consideration. *C.V.R.* [*Ramey*] *v. Westmoreland Coal Co.*, BRB No. 08-0438 BLA (May 29, 2009)(unpub.).

[3] The record does not contain any biopsy evidence relevant under 20 C.F.R. §718.304(b).

consider Dr. Castle's medical opinion, including his opinion as to the absence of a pulmonary impairment, in conjunction with the relevant medical opinion evidence, and determine whether the weight of the medical opinion evidence and the CT scan evidence of record supports a finding of complicated pneumoconiosis. The Board directed the administrative law judge to weigh together the evidence at 20 C.F.R. §718.304(a) and (c), and determine whether invocation of the irrebuttable presumption is established.[4] The Board declined to address employer's challenges to the administrative law judge's award of attorney fees, as the award was premature. *Ramey v. Westmoreland Coal Co.*, BRB Nos. 10-0203 BLA and 10-0203 BLA-S (Dec. 15, 2010)(unpub.).

On remand, the administrative law judge addressed the Board's instructions, reconsidered the evidence, and concluded that the newly submitted evidence of record established the presence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, thereby establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Considering the entire record, the administrative law judge determined that the weight of the evidence was sufficient to establish the presence of complicated pneumoconiosis arising out of coal mine employment, affording claimant the irrebuttable presumption of total disability due to pneumoconiosis. Consequently, the administrative law judge awarded benefits.[5]

In the present appeal, employer challenges the administrative law judge's finding of invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304, arguing that her decision is irrational, unsupported by substantial evidence of record, and not in accordance with applicable law. Asserting that this case has reached administrative gridlock, employer urges the Board to vacate the award of benefits and direct that this case be assigned to a different administrative law judge on remand. Employer also challenges the administrative law judge's award of attorney fees, arguing that the hourly rates approved are excessive. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response. Employer has filed

[4] Because the administrative law judge found that claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2), and claimant did not challenge that finding on appeal, the Board held that the amendments to the Act contained in Section 1556 of Public Law No. 111-148 did not affect the adjudication of this case. *Ramey v. Westmoreland Coal Co.*, BRB Nos. 10-0203 BLA and 10-0203 BLA-S, slip op. at 3 n.5 (Dec. 15, 2010)(unpub.).

[5] On August 11, 2011, the administrative law judge issued an Addendum to her decision in which she accepted claimant's brief into the record and indicated that her conclusion, that claimant was entitled to benefits, had not changed.

a reply brief, asserting that the administrative law judge failed to properly analyze whether claimant's alleged pneumoconiosis arose from his coal mine employment.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), implemented by Section 718.304 of the regulations, provides that there is an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffers from a chronic dust disease of the lung which, (A) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (B) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (C) when diagnosed by other means, is a condition that would yield results equivalent to (A) or (B). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that, "[b]ecause prong (A) sets out an entirely objective scientific standard" for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the administrative law judge must determine whether a condition that is diagnosed by biopsy or autopsy under prong (B) or by other means under prong (C) would show as a greater-than-one-centimeter opacity if it were seen on a chest x-ray. *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999). In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-1143, 1145-46 (4th Cir. 1993); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991)(en banc).

Employer contends that the administrative law judge erred in finding complicated pneumoconiosis established pursuant to Section 718.304. Specifically, employer challenges the administrative law judge's weighing of the evidence, alleging that the administrative law judge failed to comply with the Board's directives on remand;

[6] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as claimant's last coal mine employment occurred in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit 1.

erroneously evaluated the x-ray and medical opinion evidence; improperly made a medical determination by reinterpreting Dr. Castle's findings; and shifted the burden of persuasion on the merits. Employer's Brief at 7-31. Employer's arguments lack merit.

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge's decision is supported by substantial evidence, consistent with applicable law, and contains no reversible error. In finding the weight of the evidence sufficient to establish the existence of complicated pneumoconiosis, the administrative law judge reevaluated, in accordance with the Board's instructions, the newly submitted x-ray evidence at Section 718.304(a). The administrative law judge reiterated her reasons for discounting the interpretations by Drs. Wheeler and Scatarige, as previously affirmed by the Board, and determined that, of the six remaining interpretations of four x-rays,[7] Drs. Alexander and DePonte, both dually qualified Board-certified radiologists and B readers, and Dr. Rasmussen, a B reader, diagnosed findings of a Category A opacity of pneumoconiosis in five of the interpretations, while Dr. Castle, a B reader, diagnosed only simple pneumoconiosis with an area of axillary coalescence on the October 10, 2006 x-ray.[8] Second Decision and Order on Remand at 4-5; Employer's Exhibit 1. The administrative law judge also reviewed Dr. Castle's deposition testimony, wherein he explained that there was an area of increased density behind the right first rib that represented axillary coalescence, which he described as a "coming together" of discrete nodules. Second Decision and Order on Remand at 6; Employer's Exhibit 7 at 8-9. Noting that, although Dr. Castle did not give the dimensions of the area of increased

[7] Drs. Rasmussen and Alexander indicated that the x-ray dated May 9, 2006, contained Category A large opacities and was positive for simple pneumoconiosis. Director's Exhibits 17, 19. Dr. Wheeler classified this film as 1/0 with no large opacities. With respect to the July 6, 2006 x-ray, Dr. DePonte read the film as 2/2 with Category A opacities, and Dr. Wheeler read the film as 0/1 with no large opacities. Director's Exhibit 22; Employer's Exhibit 8. Dr. DePonte read the October 3, 2006 film as 2/2 with Category A opacities, and Dr. Wheeler read the film as 1/0 with no large opacities. Director's Exhibit 20; Employer's Exhibit 2. The October 10, 2006 film was interpreted as 2/2 with Category A opacities by Dr. DePonte, as 2/1 with no large opacities by Dr. Castle, and as 1/1 with no large opacities by Dr. Scatarige. Employer's Exhibits 1, 4; Claimant's Exhibit 4. Drs. Alexander, Wheeler, DePonte, and Scatarige also noted a two to three centimeter mass on x-ray.

[8] The administrative law judge found that the 2.5 and 3 centimeter mass that Drs. Wheeler and Scatarige respectively found, and the area of axillary coalescence that Dr. Castle found on x-ray, corresponded in location to the large opacity that was identified by Drs. DePonte, Alexander, and Rasmussen.

density, it corresponded in location to the large opacity identified by Drs. DePonte, Alexander, and Rasmussen. Thus, the administrative law judge accorded little weight to Dr. Castle's opinion that the confluence of densities he observed did not qualify as a category A opacity, as his was the only interpretation by a qualified reader that did not include findings of a large opacity of pneumoconiosis. Second Decision and Order on Remand at 6. Moreover, in crediting the findings of Drs. DePonte, Alexander, and Rasmussen, the administrative law judge determined that their x-ray interpretations were consistent with the information provided by claimant's treating physicians, Drs. Smiddy and Winegar, "who have been following [claimant] in connection with his progressive massive fibrosis and complicated pneumoconiosis." Second Decision and Order on Remand at 6. Thus, "based on the preponderance of persuasive interpretations, most by dually qualified physicians," the administrative law judge acted within her discretion in determining that the x-ray evidence supported a finding of complicated pneumoconiosis at Section 718.304(a).[9] *See Adkins v. Director, OWCP*, 958 F.2d 49, 52-53, 16 BLR 2-61, 2-66 (4th Cir. 1992); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-65 (2004)(en banc); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004). With respect to the treatment x-rays, the administrative law judge determined that, while none of the radiologists specifically stated that the large mass in claimant's right lung was a large opacity of pneumoconiosis, the findings by Dr. Fletcher[10] of a 3.5 cm opacity suggestive of chronic lung disease with possible underlying pneumoconiosis, and by Dr. Pugh[11] of a chronic and fibrotic mass-like opacity up to 3.5 cm in diameter, do not detract from her conclusion that the preponderance of the x-ray readings establish complicated pneumoconiosis. Second Decision and Order on Remand at 7.

---

[9] We find no merit to employer's assertion that the administrative law judge's references to opacities measuring "at least one centimeter in diameter," as well as references to the regulatory requirement of opacities "greater than one centimeter," constitute an ambiguous decision requiring that it be reversed or vacated and remanded. Any error in this respect is harmless, because the physicians agree that the opacity seen on claimant's x-rays is greater than one centimeter in diameter. Second Decision and Order on Remand at 7, 9.

[10] Dr. Fletcher read a January 23, 2006 treatment x-ray and diagnosed chronic lung disease with possible underlying pneumoconiosis, noting a focal mass-like opacity in the right upper lobe measuring approximately 3.5 cm. Claimant's Exhibit 2.

[11] Dr. Pugh read a January 9, 2006 treatment x-ray and diagnosed chronic lung disease with possible underlying pneumoconiosis, noting a focal mass-like opacity in the right upper lobe measuring approximately 3.5 cm. Dr. Pugh further noted that the mass is retrospectively visible on a July 30, 1999 film, but has enlarged. Claimant's Exhibit 2.

Next, pursuant to the Board's instructions, the administrative law judge reassessed Dr. Castle's medical opinion at Section 718.304(c). While noting that the absence of a pulmonary impairment does not preclude a finding of complicated pneumoconiosis, the administrative law judge concluded that Dr. Castle's findings of normal lung function had no bearing on his opinion that claimant does not have complicated pneumoconiosis; rather, Dr. Castle essentially relied on his radiographic findings of abnormalities that were inconsistent with complicated pneumoconiosis, but consistent with simple pneumoconiosis and granuloma. As Dr. Castle's finding of no radiographic evidence of complicated pneumoconiosis was contrary to the administrative law judge's findings at Section 718.304(a), and because the doctor's review of claimant's medical records was limited, the administrative law judge reasonably accorded little weight to Dr. Castle's opinion. Second Decision and Order at 8-9; Employer's Exhibit 1; *see Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997). By contrast, the administrative law judge permissibly accorded the opinions of Drs. Smiddy and Winegar greater weight due to their lengthy involvement in claimant's medical treatment, and the consistent nature of their evaluations of claimant's condition, indicating "a progressive history of pneumoconiosis since 1984" and "consistent findings of progressive massive fibrosis on x-ray and CT scans since 1998." Second Decision and Order on Remand at 8; *see* 20 C.F.R. §718.104(d)(5); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc). Nevertheless, the administrative law judge concluded that the medical opinion evidence, standing alone, was insufficient to establish that claimant has complicated pneumoconiosis.

Next, pursuant to the Board's instruction to consider what impact, if any, the CT scan evidence has on her x-ray findings, the administrative law judge determined that Dr. Pugh, a treating physician, interpreted a February 1, 2006 CT scan as showing pneumoconiosis with probable progressive massive fibrosis, and he identified large masses as reflected on the x-ray interpretations of Drs. DePonte, Alexander and Rasmussen, Claimant's Exhibit 2, whereas Dr. Wheeler reviewed the same CT scan, and observed several two and three centimeter masses, which he opined were compatible with conglomerate granulomatous disease, histoplasmosis, or tuberculosis, but were not large opacities of pneumoconiosis. Employer's Exhibit 9. The administrative law judge concluded that the CT scan evidence did not independently support a finding of complicated pneumoconiosis, because neither physician opined that the masses seen on the CT scan would appear on x-ray as opacities of at least one centimeter in diameter, but that it did "not detract from the x-ray evidence that establishes the presence of a Category A opacity of pneumoconiosis." Second Decision and Order on Remand at 9. Thus, the administrative law judge acted within her discretion in finding that the x-ray evidence outweighed the remaining evidence, and was sufficient to establish complicated pneumoconiosis at Section 718.304. Second Decision and Order on Remand at 9-10; *see Scarbro*, 220 F.3d at 255, 22 BLR at 2-100; *Blankenship*, 177 F.3d at 243, 22 BLR at 2-561-62.

The administrative law judge, in her role as finder of fact, is charged with evaluating the relative value of conflicting medical evidence and assessing the credibility of medical experts. *Clark*, 12 BLR at 1-155. As substantial evidence supports the administrative law judge's findings that the newly submitted evidence is sufficient to establish a change in an applicable condition of entitlement pursuant to Section 725.309(d), and that the weight of the evidence of record, old and new, is sufficient to establish complicated pneumoconiosis arising out of coal mine employment pursuant to Sections 718.304 and 718.203(b), they are affirmed.[12] *See Scarbro*, 220 F.3d 250, 22 BLR 2-93. Consequently, we affirm the administrative law judge's award of benefits.

Lastly, employer challenges the administrative law judge's two awards of attorney fees as unreasonable and excessive. Following issuance of the original decision awarding benefits, claimant's counsel (counsel) submitted a fee petition to the administrative law judge, requesting a fee of $9,012.50 for work performed between November 2, 2006 and February 26, 2008, representing 14.35 hours of legal services by Joseph E. Wolfe at an hourly rate of $400; 7.00 hours of legal services by W. Andrew Delph at an hourly rate of $200; 0.50 hours of legal services by Ryan C. Gilligan at an hourly rate of $125; and 18.50 hours of services by legal assistants at an hourly rate of $100. Employer objected to the requested hourly rates as excessive. After considering counsel's fee petition, and employer's objections thereto, the administrative law judge approved the hourly rate requested by Mr. Delph, Mr. Gilligan, and the legal assistants, but reduced the hourly rate for Mr. Wolfe to $300, and awarded a total fee of $7,617.50.

On December 15, 2009, counsel submitted a second fee petition to the administrative law judge, requesting a fee of $2,330.00 for work performed between June 1, 2009 and November 11, 2009, representing 2.65 hours of legal services by Joseph E. Wolfe at an hourly rate of $300; 1.00 hour of legal services by Ryan C. Gilligan at an hourly rate of $175; and 13.60 hours of services by legal assistants at an hourly rate of $100. Employer objected to the requested hourly rates as excessive. After considering counsel's fee petition, and employer's objections thereto, the administrative law judge approved the hourly rates requested, and awarded a total fee of $2,330.00.

[12] We reject employer's argument that the administrative law judge impermissibly relied on a pre-2001 stipulation to support her finding of pneumoconiosis arising out of coal mine employment. Employer's Brief at 10-11. The administrative law judge properly found that the original stipulation, as well as "the medical evidence overwhelmingly supporting a finding of pneumoconiosis," considered independently or in conjunction with each other, established the existence of pneumoconiosis arising out of coal mine employment. Second Decision and Order on Remand at 10-11.

On appeal, employer contends that the administrative law judge abused her discretion in awarding "premium" hourly rates "that are far in excess of the standard rates charged by and awarded in federal black lung claims." In this regard, employer maintains that the administrative law judge relied on impermissible factors for her fee awards, rather than appropriate market evidence, and provided an inadequate rationale for the hourly rates approved.[13] Employer's Brief at 31-39.

The amount of an attorney fee award by an administrative law judge is discretionary and will be upheld on appeal unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with applicable law. *See Abbott v. Director, OWCP*, 13 BLR 1-15, 1-16 (1989), *citing Marcum v. Director, OWCP*, 2 BLR 1-894 (1980); *see also Jones v. Badger Coal Co*., 21 BLR 1-102, 1-108 (1998)(en banc).

When a claimant wins a contested case, the Act provides that the employer, his insurer, or the Black Lung Disability Trust Fund shall pay a "reasonable attorney's fee" to claimant's counsel. 30 U.S.C. §932(a), incorporating 33 U.S.C. §928 (a). The regulation governing fees provides, in part, that:

> Any fee approved . . . shall take into account the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to which the claim was raised, the level at which the representative entered the proceedings, and any other information which may be relevant to the amount of fee requested.

20 C.F.R. §725.366(b); *see Pritt v. Director, OWCP*, 9 BLR 1-159 (1986); *see also Velasquez v. Director, OWCP*, 844 F.2d 738, 11 BLR 2-134 (10th Cir. 1988).

In reviewing counsel's requested hourly rates, the administrative law judge performed the requisite analysis set forth in Section 725.366(b), considered employer's objections and the evidence provided as to the prevailing market rate for black lung attorneys, and adequately explained her determination that the hourly rates she awarded for work performed by the attorneys and legal assistants were reasonable under the facts of this case. Noting that she had observed counsel practice on a number of occasions, and that counsel were highly experienced attorneys who produced superior work product

[13] Because employer does not challenge the number of hours claimed, we affirm, as unchallenged on appeal, the administrative law judge's finding that the hours requested by counsel in the fee petitions are reasonable and appropriate. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

and had represented claimant zealously and competently in this case, the administrative law judge, within a proper exercise of her discretion, relied on the following considerations: past hourly rates received by counsel; the nature and complexity of the legal issues involved; the quality of the representation; the qualifications and expertise of the attorneys; the 2006 Altman & Weil Survey of Law Firm Economics, reporting a range of hourly rates for attorneys in various regions based on years of practice and experience; and the ultimate benefit to claimant. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 24 BLR 2-269 (4th Cir. 2010); *B & G Mining, Inc. v. Director, OWCP* [*Bentley*], 522 F.3d 657, 665-666, 24 BLR 2-106, 2-124 (6th Cir. 2008)(holding that the adjudicator might need to consider one or more specific factors, including experience and complexity of the case, to determine where the particular attorney's representation lies along the spectrum of the market for legal services); Decision and Order Awarding Attorney Fees at 2-4; Supplemental Decision and Order Awarding Attorneys' Fee at 2-4. Contrary to employer's argument, the administrative law judge did not rely on the risk of loss to enhance the hourly rates approved; rather, she recognized that risk of loss is a factor that is already incorporated into any reasonable hourly rate. Decision and Order Awarding Attorney Fees at 3 n.1; Supplemental Decision and Order Awarding Attorneys' Fee at 4; *see City of Burlington v. Dague*, 505 U.S. 557 (1992); *Bentley*, 522 F.3d at 666-667, 24 BLR at 2-125, 2-126. As employer has failed to satisfy its burden of proving that the hourly rates awarded were excessive or that the administrative law judge abused her discretion in this regard, we affirm the administrative law judge's awards of attorney fees in the amounts of $7,617.50 and $2,330.00.

Accordingly, the administrative law judge's Second Decision and Order on Remand Awarding Benefits; the Addendum Second Decision and Order on Remand Awarding Benefits; the Decision and Order Awarding Attorney Fees; and the Supplemental Decision and Order Awarding Attorneys' Fees are affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge