

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB Nos. 17-0580 BLA and
18-0221 BLA

GLENDINE BELL, widow of, and on behalf)
of, the Estate of CURTIS BELL)

Claimant-Respondent)

v.)

ISLAND CREEK KENTUCKY MINING)

Employer-Petitioner)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED: 08/23/2018

DECISION AND ORDER

Appeal of the Attorney Fee Orders of Joseph E. Kane, Administrative Law
Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe, Williams & Reynolds), Norton, Virginia, for
claimant.

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for
employer.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and ROLFE,
Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Attorney Fee Orders (2012-BLA-05418 and 2012-BLA-
05580) issued by Administrative Law Judge Joseph E. Kane in a miner's claim and a
survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, as

amended, 30 U.S.C. §§901-944 (the Act) (2012).¹ Employer argued in the miner's claim that the administrative law judge erred in ordering reimbursement of expenses associated with obtaining a medical report that claimant's counsel ultimately withdrew from consideration. In the survivor's claim, employer contended that the administrative law judge erred in finding that the time billed in conjunction with obtaining and reviewing the medical report was compensable.

On July 27, 2018, employer filed a Motion to Hold Appeals in Abeyance and to Consolidate Appeals, notifying the Board that it had discussed the appeals with claimant's counsel, who agreed that the parties should attempt to settle their dispute regarding whether the expenses and fees related to the medical report are reimbursable and compensable. On August 8, 2018, employer filed a Submission of Parties' Agreed Orders Resolving Appeals, asking the Board to accept the parties' agreement that claimant's counsel would withdraw his request for reimbursement of the expenses and fees associated with the medical report.

We hereby grant employer's Motion to Consolidate Appeals and we accept the parties' agreement whereby claimant's counsel waives recovery of the expenses and fees related to the medical report.² Accordingly, we modify the Attorney Fee Order issued in the miner's claim by subtracting expenses in the amount of \$2,500.00 from the \$10,695.50 total fee awarded by the administrative law judge.³ Thus, the fee award in the miner's claim is reduced from \$10,695.50 to \$8,195.50. Regarding the Attorney Fee Order issued in the survivor's claim, we modify the fee award by subtracting the \$1,587.50 the administrative law judge granted for time billed in conjunction with the medical report from the total fee award of \$3,437.50.⁴ The fee award in the survivor's claim is therefore reduced to \$1,850.00.

¹ Judge Kane awarded benefits in the miner's claim in a Decision and Order issued on October 27, 2016. He awarded benefits in the survivor's claim, based on the derivative entitlement provision at 20 U.S.C. §932(*l*), in a Decision and Order issued on the same date.

² Employer's Motion to Hold Appeals in Abeyance is moot.

³ In the fee petition in the miner's claim, counsel sought reimbursement of \$2,500.00 in expenses for the medical report. The petition did not reflect any time billed in connection with obtaining the report.

⁴ The "Agreed Order" the parties submitted in the appeal of the fee award in the survivor's claim indicates that counsel requested \$1,737.50 for services performed in connection with obtaining and reviewing the medical report. Agreed Order (in 18-0221 BLA) at 4. Without explanation, the "Agreed Order" then refers to counsel's waiver of

Accordingly, the administrative law judge's Attorney Fee Order in the miner's claim and Attorney Fee Order in the survivor's claim are modified as set forth above and affirmed in all other respects.

SO ORDERED.

HALL, Chief

Administrative Appeals Judge

BETTY JEAN

JUDITH S. BOGGS
Administrative Appeals Judge

ROLFE

Administrative Appeals Judge

JONATHAN

“the aforementioned \$1,262.50 in attorney's and legal assistants' fees associated with the preparation and review of [the medical] opinion.” *Id.* at 5. Based on counsel's documented request for \$1,737.50 in fees associated with the medical report, the administrative law judge's disallowance of \$150.00 of this request, and employer's acknowledgement that the administrative law judge reduced the fee request by \$150.00 to \$1,587.50, we hold that this is the correct figure. Survivor's Claim Attorney Fee Order at 3; Employer's Brief in Support of Petition for Review (in 18-0221 BLA) at 6 n.5.