BRB Nos. 11-0644 BLA,
11-0757 BLA, and 12-0269 BLA

DOROTHY GEPHART (o/b/o and Widow of ROBERT GEPHART) Claimant-Respondent v. PEABODY COAL COMPANY, c/o OLD REPUBLIC INSURANCE COMPANY and PEABODY INVESTMENTS, INCORPORATED Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 12/07/2012 DECISION and ORDER

Appeals of the Decision and Order and Supplemental Decision and Order of Joseph E. Kane, and the Decision and Order of Larry S. Merck, Administrative Law Judges, United States Department of Labor.

Anne Megan Davis and Thomas E. Johnson (Johnson, Jones, Snelling, Gilbert & Davis, P.C.), Chicago, Illinois, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

Emily Goldberg-Kraft (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the

Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (10-BLA-5300) of Administrative Law Judge Joseph E. Kane awarding benefits on a miner's claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). Employer also appeals the Decision and Order (10-BLA-5845) of Administrative Law Judge Larry S. Merck awarding benefits on a survivor's claim. Additionally, employer appeals Judge Kane's Supplemental Decision and Order Awarding Attorney Fees (10-BLA-5300). The Board has consolidated these appeals for purposes of decision only.

This case involves a miner's claim filed on February 17, 2005, and a survivor's claim filed on August 18, 2009. The miner's claim was before the Board previously. In the initial decision in the miner's claim, Administrative Law Judge Thomas F. Phalen, Jr., found that the x-ray evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Judge Phalen also found that the miner was entitled to a presumption that his pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). However, Judge Phalen found that employer established rebuttal of this presumption. Accordingly, Judge Phalen denied benefits.

Pursuant to the miner's appeal, the Board affirmed Judge Phalen's finding that employer established rebuttal of the presumption that the miner's pneumoconiosis arose of his coal mine employment pursuant to 20 C.F.R. §718.203(b). *R.I.G.* [*Gephart*] *v. Peabody Coal Co.*, BRB No. 07-0761 BLA (May 29, 2008) (unpub.). The Board, therefore, affirmed Judge Phalen's denial of benefits. *Id.*

The miner timely requested modification.[1] *See* 20 C.F.R. §725.310. In a Decision and Order dated May 25, 2011, Judge Kane noted that Congress enacted amendments to the Act, which became effective on March 23, 2010, affecting claims filed after January 1, 2005. Relevant to this miner's claim, Section 1556 of Public Law No. 111-148 reinstated the presumption of Section 411(c)(4) of the Act, 30 U.S.C.

[1] The miner died on June 21, 2009, while his request for modification was pending before the district director. Director's Exhibit 46. Claimant, the miner's widow, is pursuing the miner's claim.

§921(c)(4). Under Section 411(c)(4), if a miner establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and that he or she has a totally disabling respiratory impairment, there will be a rebuttable presumption that the miner was totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4). If the presumption is invoked, the burden of proof shifts to employer to disprove the existence of pneumoconiosis, or to establish that the miner's pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4); *see Keene v. Consolidation Coal Co.*, 645 F.3d 844, 847, 24 BLR 2-385, 2-395 (7th Cir. 2011); *Blakley v. Amax Coal Co.*, 54 F.3d 1313, 1320, 19 BLR 2-192, 2-203 (7th Cir. 1995).

Applying amended Section 411(c)(4), Judge Kane found that, because the miner established nineteen and one-half years of coal mine employment in conditions substantially similar to those in an underground mine,[2] and the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), the miner invoked the rebuttable presumption. Judge Kane also found that employer failed to establish either that the miner did not have pneumoconiosis, or that his pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. Therefore, Judge Kane found that employer did not rebut the presumption. Having found that the miner established a mistake in a determination of fact pursuant to 20 C.F.R. §725.310, Judge Kane granted the miner's request for modification, and awarded benefits.

In a separate Decision and Order issued on July 11, 2011, addressing the survivor's claim, Judge Merck noted that Section 1556 revived Section 932(*l*) of the Act, which provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*). Because claimant filed her survivor's claim after January 1, 2005, the claim was pending on March 23, 2010, and the miner was found to be eligible to receive benefits at the time of his death, Judge Merck awarded claimant survivor's benefits pursuant to amended Section 932(*l*).

On appeal, with respect to the miner's claim, employer contends that Judge Kane erred in finding that employer failed to rebut the Section 411(c)(4) presumption.[3]

[2] The miner's last coal mine employment was in Indiana. Director's Exhibit 3. Accordingly, the Board will apply the law of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[3] Because it is unchallenged on appeal, we affirm Administrative Law Judge

Regarding the survivor's claim, employer contends that, because Judge Kane erred in awarding benefits in the miner's claim, claimant is not entitled to survivor's benefits pursuant to amended Section 932(*l*). Claimant responds in support of the awards of benefits in both the miner's claim and the survivor's claim. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response brief, requesting that the Board reject employer's argument that this case should be held in abeyance.[4]

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. 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).

The Miner's Claim

Because the miner invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4), the burden of proof shifted to employer to establish rebuttal by disproving the existence of pneumoconiosis, or by proving that the miner's pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4). Judge Kane (the administrative law judge) found that employer failed to establish rebuttal by either method. Decision and Order at 22-30. Specifically, the administrative law judge found that employer failed to disprove the existence of both clinical and legal pneumoconiosis.[5] *Id*. at 17, 20. The

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Joseph E. Kane's finding that claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). We similarly affirm Judge Kane's findings that claimant, therefore, established a mistake in a determination of fact pursuant to 20 C.F.R. §725.310, and that reopening the miner's claim would render justice under the Act. *Id.*

[4] Employer's argument, that further proceedings or actions related to this claim should be held in abeyance pending resolution of the constitutional challenges to other provisions of the Patient Protection and Affordable Care Act, Public Law No. 111-148, is moot. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. , 132 S.Ct. 2566 (2012).

[5] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). Legal pneumoconiosis "includes any chronic

administrative law judge further found that employer failed to disprove a causal relationship between the miner's disability and his pneumoconiosis. *Id*. at 20.

Employer contends that the administrative law judge erred in finding that employer failed to disprove the existence of legal pneumoconiosis. The administrative law judge considered the opinions of Drs. Rosenberg, Renn, and Cohen. Each of these physicians opined that the miner suffered from emphysema, but differed as to whether it was related to the miner's coal mine dust exposure. Dr. Cohen opined that the miner suffered from emphysema due to both coal mine dust exposure and cigarette smoking. Claimant's Exhibits 10, 17. Conversely, Drs. Rosenberg and Renn attributed the miner's emphysema exclusively to cigarette smoking. Employer's Exhibits 12, 14.

In evaluating whether the evidence disproved the existence of legal pneumoconiosis, the administrative law judge accorded less weight to the opinions of Drs. Rosenberg and Renn because he found that they were premised on assumptions that were inconsistent with the Act and the regulations. Decision and Order at 27-28. On the other hand, the administrative law judge found that Dr. Cohen's diagnosis of legal pneumoconiosis was well-reasoned and well-documented. *Id.* at 29. The administrative law judge found that Dr. Cohen's opinion was also entitled to greater weight based upon his superior qualifications. *Id.* at 26. The administrative law judge, therefore, found that employer failed to disprove the existence of legal pneumoconiosis.

Employer argues that the administrative law judge erred in his consideration of the opinions of Drs. Rosenberg and Renn. We disagree. The administrative law judge permissibly accorded less weight to Dr. Rosenberg's opinion, because the doctor provided no support for his position that a diagnosis of coal mine dust-induced emphysema is dependent upon the existence of clinical pneumoconiosis.[6] *See* 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000) (indicating that "[m]ost evidence to date indicates that exposure to coal mine dust can cause chronic airflow limitation in life and emphysema at autopsy, and this may occur independently of CWP [clinical pneumoconiosis]"); *see also Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521

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lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[6] Dr. Rosenberg opined that the miner's emphysema was not related to coal mine dust, explaining that "[w]hen coal mine dust exposure causes emphysema, it begins as focal emphysema in and around coal macules and micronodules." Employer's Exhibit 2. Because there were no "nodular manifestations," Dr. Rosenberg opined that the emphysema was caused by the miner's smoking. *Id.*

F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009); Decision and Order at 27.

Additionally, the administrative law judge permissibly found Dr. Renn's reasoning, that dust-induced emphysema and smoke-induced emphysema occur through different mechanisms and therefore, can be distinguished,[7] to be at odds with the Department of Labor's recognition that "dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms." Decision and Order at 28, *quoting* 65 Fed. Reg. at 79,943; *see Beeler*, 521 F.3d at 726, 24 BLR at 2-103; *Obush*, 24 BLR at 1-125-26.

Because the opinions of Drs. Rosenberg and Renn are the only opinions supportive of a finding that the miner did not suffer from legal pneumoconiosis, we affirm the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis.[8] Employer's failure to rule out legal pneumoconiosis

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[7] Dr. Renn explained that he excluded coal mine dust exposure as a cause of the miner's emphysema because the emphysema progressed from the centrilobular to bullous type:

> [W]hen you talk about end-stage lung disease or progression of emphysema, you have to think of whether you're talking about lateral or vertical. In the progression of coal workers' pneumoconiosis or centrilobular emphysema associated with coal mine dust exposure, you have a lateral progression.
>
> In other words, there's more centrilobular emphysema, but it doesn't go beyond that anatomic type; whereas, you've got vertical progression when you have it associated with tobacco smoking which is from centrilobular to panlobular to bullous.

Employer's Exhibit 18 at 53-54. Because the miner's emphysema had progressed to the bullous state, Dr. Renn attributed the disease to smoking.

[8] The administrative law judge further found, within his discretion, that Dr. Cohen's opinion, that the miner's emphysema was due to both coal mine dust exposure and cigarette smoking, was well-reasoned, noting that the doctor "explained that bullous emphysema occurs regardless of what caused the centrilobular emphysema and that centrilobular emphysema can progress regardless of the presence of ongoing exposure to cigarettes or coal dust." Decision and Order at 29; *see Freeman United Coal Mining Co. v. Cooper*, 965 F.2d 443, 448, 16 BLR 2-74, 2-79 (7th Cir. 1992); *see also Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lucostic v. U.S. Steel*

precludes a rebuttal finding that the miner did not have pneumoconiosis. *See Beeler*, 521 F.3d at 726, 24 BLR at 2-103; *Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 22 BLR 2-35, 2-37 (7th Cir. 2007); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 468-69, 22 BLR 2-311, 2-318 (7th Cir. 2001). We, therefore, affirm the administrative law judge's finding that employer did not establish rebuttal by disproving the existence of pneumoconiosis.

Employer next argues that the administrative law judge erred in finding that employer did not rebut the Section 411(c)(4) presumption by establishing that the miner's pulmonary or respiratory impairment "did not arise out of, or in connection with, employment in a coal mine." 30 U.S.C. §921(c)(4). Contrary to employer's contention, the administrative law judge permissibly found that the same reasons for which he discredited the opinions of Drs. Rosenberg and Renn, that the miner did not suffer from legal pneumoconiosis, also undercut their opinions that the miner's impairment was unrelated to his coal mine employment. *See Stalcup*, 477 F.3d at 484, 24 BLR at 2-37; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318; *see also Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 895, 13 BLR 2-348, 2-355 (7th Cir. 1990); Decision and Order at 29-30. We, therefore, affirm the administrative law judge's finding that employer failed to meet its burden to establish rebuttal. *See Blakley*, 54 F.3d at 1320, 19 BLR at 2-203.

Because the miner established invocation of the Section 411(c)(4) presumption that he was totally disabled due to pneumoconiosis, and employer did not rebut the presumption, we affirm the administrative law judge's award of benefits in the miner's claim.

The Survivor's Claim

Employer contends that, if Judge Kane's award of benefits in the miner's claim is not affirmed, Judge Merck's award of benefits in the survivor's claim must be vacated. In light of our affirmance of Judge Kane's award of benefits in the miner's claim,

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Corp., 8 BLR 1-46, 1-47 (1985); Claimant's Exhibit 17. Additionally, the administrative law judge permissibly accorded greater weight to Dr. Cohen's opinion, based upon his superior qualifications. *See Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483, 22 BLR 2-265, 280-81 (7th Cir. 2001) (holding that it is "rational to give great weight to Dr. Cohen's views, particularly in light of his remarkable clinical experience and superior knowledge of cutting-edge research").

employer's only argument in regard to the survivor's claim is moot.[9] Therefore, Judge Merck's determination that claimant is derivatively entitled to benefits pursuant to amended Section 932(*l*) is affirmed.

Attorney Fee Award

Lastly, employer challenges Judge Kane's (the administrative law judge's) award of attorney's fees. The administrative law judge considered counsel's fee petition, and employer's objections thereto, and awarded claimant's counsel a total fee of $34,497.72, for 124.60 hours of legal services at an hourly rate of $250.00 (Anne Megan Davis and Thomas E. Johnson), $222.75 in legal research, and $3,124.97 in expenses.[10]

On appeal, employer objects to the number of hours awarded by the administrative law judge, arguing that the work performed was either not necessary, or was excessive. Claimant's counsel responds in support of the administrative law judge's fee award. The Director has not filed a response brief. In a reply brief, employer reiterates its previous contentions.

The amount of an award of an attorney's fee by the administrative law judge is discretionary and will be upheld on appeal unless shown by the challenging party to be arbitrary, capricious, or an abuse of discretion. *Abbott v. Director, OWCP*, 13 BLR 1-15, 1-16 (1989).

On appeal, employer argues that the administrative law judge erred in not addressing whether the time spent by counsel, in researching and developing evidence regarding the nature of the miner's coal mine employment, was reasonable. The test for determining whether an attorney's work was necessary is whether counsel, at the time

[9] Because Administrative Law Judge Larry S. Merck determined that the miner was eligible to receive benefits at the time of his death, he found that claimant is derivatively entitled to benefits pursuant to amended Section 932(*l*). Claimant satisfied her burden to establish each fact necessary to demonstrate her entitlement under amended Section 932(*l*): that she filed her claim after January 1, 2005; that she is an eligible survivor of the miner; that her claim was pending on March 23, 2010; and that the miner was determined to be eligible to receive benefits at the time of his death.

[10] Employer did not object to the requested hourly rate, but objected to several time entries and to certain expenses. The administrative law judge disallowed 0.66 hour that Anne Megan Davis and Thomas E. Johnson double-billed for collaboration; 8.0 hours of Mr. Johnson's travel time; 0.25 hour that was spent printing a doctor's report; and 2.0 hours of the time that counsel spent defending their fee petition.

that he performed the work in question, could have reasonably regarded the work as necessary to establish entitlement to benefits. *See Lanning v. Director, OWCP*, 7 BLR 1-314, 316 (1984). Once a service has been found to be compensable, the adjudicating officer must decide whether the amount of time expended by the attorney in performance of the service is excessive or unreasonable.[11] *Id.* In this case, the administrative law judge found "no reason to deduct hours for [counsel's] time spent on [the substantial similarity] issue."[12] Supplemental Decision and Order at 10. The administrative law judge explained that the issue of substantial similarity was a central issue in the case, as it was "a prerequisite to invocation of the fifteen-year presumption, and . . . was crucial to [the miner's] case." *Id.* We, therefore, affirm the administrative law judge's finding that counsel's work in developing the evidence on that issue was reasonable. *See Lanning*, 7 BLR 1-316.

Employer next objects to the 3.0 hours that the administrative law judge awarded Mr. Johnson for his legal services provided on May 13, 2010. In rejecting employer's challenge, the administrative law judge explained:

> A review of [Mr.] Johnson's May 13, 2010, entry shows he did not spend the entire three hours randomly searching files. In fact, [Mr.] Johnson billed three hours for (a) reviewing a memo by [Ms.] Davis, (b) reviewing a 1995 document on surface miners' exposure to coal dust, (c) reviewing affidavits, and (d) searching files for other claimants who might be witnesses on the issue of substantial similarity. I find that all these tasks

[11] We reject employer's contention that the administrative law judge improperly awarded fees because counsel's fee petition contained instances of "block billing." The administrative law judge found that counsel's very limited use of block billing did not prevent him from determining whether counsel's work was necessary, and whether the time sought for performing the work was reasonable. *See Lanning v. Director, OWCP*, 7 BLR 1-314, 316 (1984); Supplemental Decision and Order at 10.

[12] In order to invoke the Section 411(c)(4) presumption, a miner must initially establish at least fifteen years of "employment in one or more underground coal mines," or of "employment in a coal mine other than an underground mine," in conditions that were "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4). In order for a surface miner to prove that his or her work conditions were substantially similar to those in an underground mine, the miner is required to proffer sufficient evidence of dust exposure in his or her work environment. *Director, OWCP v. Midland Coal Co*. [*Leachman*], 855 F.2d 509, 512 (7th Cir. 1988); *see also Summers*, 272 F.3d at 479, 22 BLR at 2-275. Because the miner's work was at a surface mine, he was required to provide such proof.

were necessary to the case, and that three hours for performing them is not excessive.

Supplemental Decision and Order at 10. Employer has not demonstrated that the administrative law judge abused his discretion in finding that the 3.0 hours of legal services performed by Mr. Johnson on May 13, 2010 were reasonable and necessary. *Lanning*, 7 BLR at 1-316.

Employer next argues that the administrative law judge erred in awarding 3.0 hours for the time that Mr. Johnson spent preparing Mr. Clyde Parks to testify regarding the similarity of conditions in the miner's surface coal mine employment to conditions in an underground mine. The administrative law judge accurately noted that Mr. Johnson spent 3.0 hours preparing Mr. Parks for his testimony. The administrative law judge found that 3.0 hours was not an excessive amount of time to prepare Mr. Parks to testify, noting that Mr. Parks "was an important witness, and gave extensive testimony on the issue of substantial similarity, a crucial component [in the miner's] case." Supplemental Decision and Order at 11. Employer has not demonstrated that the administrative law judge abused his discretion in finding that the 3.0 hours of legal services requested by Mr. Johnson on June 7, 2010 for preparing Mr. Parks for his testimony were reasonable and necessary.[13] *Lanning*, 7 BLR at 1-316.

We also reject employer's contention that the administrative law judge erred in awarding 2.50 hours that Mr. Johnson billed for calling and preparing an unidentified witness on the substantial similarity issue. The administrative law judge permissibly found that Mr. Johnson's time attempting to locate other witnesses was not excessive, explaining that Mr. Johnson "could have reasonably regarded preparing other witnesses as necessary to establish entitlement." Supplemental Decision and Order at 11; *see Lanning*, 7 BLR at 1-316.

[13] Employer notes that Mr. Johnson also interviewed Mr. Parks on May 19, 2010 (part of 1.25 hour), and had a discussion with Mr. Parks regarding his coal mine employment on June 1, 2010 (0.50 hour). Employer also notes that Mr. Johnson spent 3.0 hours drafting questions for Mr. Parks and another witness on June 7, 2010. Employer argues that the administrative law judge did not address whether this time was reasonable and necessary. Employer's contention has no merit. The administrative law judge found that all of counsel's time spent researching and developing the issue of substantial similarity was reasonable and necessary. Supplemental Decision and Order at 10. Employer has not demonstrated that the administrative law judge abused his discretion in making that determination. *Lanning v. Director, OWCP*, 7 BLR 1-314, 1-316 (1984).

Employer next contends that the administrative law judge erred in the amount of time that he awarded Mr. Johnson for his work concerning Dr. Renn's deposition. The administrative law judge rejected employer's objection, explaining that:

> [Mr.] Johnson billed four and one-third hours to prepare for the deposition, three and one-third hours to participate in the deposition, and one and one-half hours after the deposition . . . locating and reviewing medical articles relied on by Dr. Renn in the deposition. This is a reasonable amount of time to spend preparing for, participating in, and following up on an important deposition.

Supplemental Decision and Order at 11. Employer has not demonstrated that the administrative law judge abused his discretion in finding that the time spent by Mr. Johnson, preparing for, participating in, and reviewing, Dr. Renn's deposition, was reasonable and necessary. *Lanning*, 7 BLR at 1-316.

Employer finally challenges the fee awarded to claimant's counsel for travel time to and from the hearing. Reasonable and necessary travel time and expenses are compensable. *See* 20 C.F.R. §§725.366(b),(c), 725.459(a); *Branham v. Eastern Associated Coal Corp.*, 19 BLR 1-1, 1-4 (1994); *Bradley v. Director, OWCP*, 4 BLR 1-241, 1-245 (1981). The administrative law judge agreed with employer that Mr. Johnson's request for sixteen hours of travel time was excessive:

> I do not find it reasonable to charge the full hourly rate for traveling. Also, Petitioners admit that [Mr.] Johnson worked on three other cases while he was in Zanesville, in two cases meeting with the miners and in one case participating in a deposition. Petitioners explained, however, that they did not "double-bill" by charging these clients for the travel time as well. Furthermore, according to the [map] directions Petitioners submitted (Exhibit S), the estimated travel time from Chicago, Illinois, to Zanesville, Ohio is six hours and forty-four minutes each way, not eight hours. Therefore, I find it appropriate to reduce Petitioners' travel time by half, and award only eight hours for the travel.

Supplemental Decision and Order at 11. Employer argues that it "is not clear how the [administrative law judge] arrived at eight hours, especially after he found that counsel overestimated the estimated travel time and that was not reasonable to bill [employer] for all the time spent." Employer's Brief at 7. However, employer has failed to demonstrate that the administrative law judge's decision, to award claimant's counsel eight hours for his travel expenses, was arbitrary, capricious, or an abuse of discretion. *Abbott*, 13 BLR at 1-16.

In light of the foregoing, we affirm the administrative law judge's award of $34,497.72 in attorney's fees and expenses. *Abbott*, 13 BLR at 1-16.

Accordingly, the Decision and Orders awarding benefits in the miner's claim and the survivor's claim are affirmed, and the Supplemental Decision and Order Awarding Attorney Fees is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge