

BRB No. 02-0528 BLA

ARTHUR BOOTH)	
)	
Claimant-Respondent)	
)	
v.)	
)	
WOLF CREEK COLLIERIES)	DATE ISSUED:
)	
and)	
)	
ZIEGLER COAL HOLDING COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Supplemental Decision and Order - Granting Attorney Fees of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Tab R. Turano (Greenberg Traurig LLP), Washington, D.C., for employer and carrier.

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order (1998-BLA-0766) of Administrative Law Judge Daniel J. Roketenetz granting attorney fees on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of

1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).¹

Subsequent to the issuance of the administrative law judge's Decision and Order awarding benefits and while this case was pending on appeal before the Board, claimant's counsel submitted a fee petition to the administrative law judge, requesting \$6,108.75 for 33.75 hours of services at \$150 per hour, and \$1,046.25 in expenses. Thereafter, employer filed objections and claimant responded to employer's objections. Following the Board's remand of this case to the administrative law judge and issuance of another Decision and Order awarding benefits, claimant's counsel submitted a fee petition requesting an additional \$4,543.50 for 26.75 hours of services at \$150 per hour, and \$531.00 in expenses. Thereafter, employer again filed objections and claimant responded to the objections. In his Supplemental Decision and Order, the administrative law judge rejected employer's objections to counsel's hourly rate and approved the full amount of the fee requested. Accordingly, the administrative law judge awarded claimant's counsel a fee of \$10,652.25, representing 60.5 hours of services at \$150 per hour, plus \$1,577.25 in expenses.

On appeal, employer challenges the number of hours, the hourly rate and the expenses approved by the administrative law judge. Claimant responds, urging affirmance of the administrative law judge's fee award, to which employer replies in opposition.

The award of attorney fees pursuant to Section 28 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §928, as incorporated into the Act by 30 U.S.C. §932(a) and implemented by 20 C.F.R. §725.367(a) 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 (1989), citing *Marcum v. Director, OWCP*, 2 BLR 1-894 (1980).

¹The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Employer initially contends that the administrative law judge erred in awarding attorney fees at the hourly rate of \$150, arguing that the administrative law judge mechanically approved that rate and that counsel did not submit sufficient proof to support his claim that \$150 is his normal hourly rate. We disagree. The administrative law judge permissibly rejected employer's suggestion that an hourly rate of \$100 would be more in line with market rates for attorneys in Eastern Kentucky,² and agreed with counsel's representations that counsel's usual fee of \$150 per hour was reasonable in light of his location, experience, level of expertise and complexity of the case, as supported by Altman and Weil's *1998 Survey of Law Firm Economics* reflecting standard hourly billing rates between \$150 and \$235 in the South. Supplemental Decision and Order at 2. Finding that counsel's usual rate of \$150 per hour was justified by the results obtained in this case and the quality of representation provided to the claimant, the administrative law judge acted within his discretion in approving the requested rate, *see* 20 C.F.R. §725.366(b), and employer has not demonstrated that the hourly rate awarded is unreasonable or an abuse of discretion. Consequently, we affirm the administrative law judge's award of attorney fees at the rate of \$150 per hour. *See Abbott, supra*.

Employer next argues that counsel's use of quarter-hour billing increments requires that the fee award be vacated. Employer maintains that counsel's billing records reflect 95 quarter-hour entries for routine tasks such as preparing, receiving, sending and reviewing letters, orders and faxes, and employer asserts that the total number of hours charged for such

²We reject employer's assertion that claimant's counsel conceded that \$100 per hour is the prevailing rate for the type of work at issue in his geographic locality. The record reflects that in support of his fee petition, counsel submitted four orders which showed that his usual rate of \$150 per hour had been approved at all levels of Black Lung proceedings. Counsel additionally attached a Memorandum Opinion from the United States District Court for the Eastern District of Kentucky, which indicated that upon production of evidence that counsel has been routinely awarded \$150 per hour in Black Lung benefit claims, and in view of the quality of counsel's services, the maximum rate of \$125 per hour under 28 U.S.C. §2412(d)(2) was warranted in an action for Social Security Disability Benefits.

services was unreasonable. While we agree with claimant's argument that the use of quarter-hour billing increments is reasonable and appropriate, the administrative law judge did not address employer's specific objections to counsel's 1999 fee application. We therefore vacate the administrative law judge's award of attorney fees for 60.5 hours of services, and remand this case for the administrative law judge to address employer's objections and determine whether the amount of time expended for the services provided was excessive or unreasonable. *See Lanning v. Director, OWCP*, 7 BLR 1-314 (1984).

Lastly, employer challenges the administrative law judge's award of \$1,577.25 for miscellaneous expenses. Employer argues that pursuant to Section 725.366(c), no reimbursement is permitted for expenses incurred in obtaining medical or other evidence which has previously been submitted in connection with the claim. Thus employer asserts that the costs for obtaining evidence such as x-ray re-readings cannot be shifted to employer. Employer's arguments have merit. As the administrative law judge did not inquire into the nature of the charged expenses, we vacate his award of \$1577.25 for miscellaneous expenses, and instruct him on remand to determine whether reimbursement of the expenses sought is allowable pursuant to Section 725.366(c).

Accordingly, the administrative law judge's Decision and Order - Granting Attorney Fees is affirmed in part, vacated in part, and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

