

BRB No. 04-0586 BLA

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| ROBERTA C. ZITKUS |) | |
| (Widow of FRANCIS ZITKUS) |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | DATE ISSUED: 02/14/2005 |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Respondent |) | DECISION and ORDER |

Appeal of the Proposed Order - Supplemental Award Fee for Legal Services of Maribeth Girton, District Director, United States Department of Labor.

Charles A. Bressi, Jr., Pottsville, Pennsylvania, for claimant.

Michelle Gerdano (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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:

Claimant's counsel appeals the Proposed Order - Supplemental Award Fee for Legal Services awarding attorney's fees for legal services performed in securing claimant an award of benefits 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). Claimant's counsel filed a complete, itemized fee petition with the district director requesting a total fee of \$5,568.51 for 27.75 hours of work at an hourly rate of \$175.00, and \$712.26 for costs incurred in representing claimant. Upon consideration of the fee petition, the district director found \$125.00 to be a reasonable hourly rate and, reducing

the hours by one-quarter hour for work performed before the Office of Administrative Law Judges, awarded claimant's counsel a total fee of \$3,437.50 for 27.50 hours of work, and \$712.26 for costs.

On appeal, claimant's counsel asserts that his request for an hourly rate of \$175.00 is not unreasonable given the complexity of the case, his expertise and experience. Claimant's counsel also generally states that risk of loss, delay of payment and the amount of the award are factors to be considered in setting the hourly rate. The Director, Office of Workers' Compensation Programs, has responded, urging affirmance.¹

The award of an attorney's fee 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 law, *see Abbott v. Director, OWCP*, 13 BLR 1-15 (1989); *Marcum v. Director, OWCP*, 2 BLR 1-894 (1980).

The district director found that the work performed by counsel involved a routine case and did not require special ability or effort. The district director also found that the approved rate is comparable to that being charged by other highly qualified attorneys in the same geographical region who have considerable experience in handling Federal Black Lung claims. Other than generally asserting that the case was not routine and that risk of loss, delay of payment and the amount of the award are factors to be considered in setting the hourly rate, claimant's counsel raises no other allegation of error. Based on the foregoing, we affirm the district director's reduction of counsel's requested hourly rate of \$175.00 to \$125.00 inasmuch as the district director considered the factors contained at 20 C.F.R. §725.366(b) and within her discretion, determined the reasonable hourly rate to be \$125.00. *Jones v. Badger Coal Co.*, 21 BLR 1-102 (1998)(*en banc*); *Pritt v. Director, OWCP*, 9 BLR 1-159 (1986); *Gillman v. Director, OWCP*, 9 BLR 1-7 (1986). Because claimant's counsel has not demonstrated an abuse of discretion in the district director's award of attorney's fees, the award is affirmed.

¹We affirm the district director's determination that one-quarter hour is disallowed because it is a request for services performed before an administrative law judge and this finding is unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Accordingly, the district director's Proposed Order - Supplemental Award Fee for Legal Services is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge