

BRB No. 11-0768 BLA

HAROLD L. WILLIAMS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
RIVERS EDGE MINING, INCORPORATED	)	DATE ISSUED: 07/31/2012
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Attorney Fee Order and the Order Granting Reconsideration in Part of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

W. William Prochot (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Attorney Fee Order and the Order Granting Reconsideration in Part (2008-BLA-5721) of Administrative Law Judge Richard A. Morgan rendered in connection with an award of benefits on a claim 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). Claimant's counsel submitted a fee petition to the administrative law judge, requesting a total fee of \$14,292.50 for work performed between September 10, 2008 and October 15, 2010, representing 24.50 hours of legal services by Joseph W. Wolfe at an hourly rate of \$300; 0.50 hours of legal services by Bobby S. Belcher, Jr. at an hourly rate of \$250; 5.50 hours of legal services by W. Andrew Delph at an hourly rate of \$200;

6.50 hours of legal services by Ryan C. Gilligan at an hourly rate of \$175; 45.50 hours of services by full-time legal assistants at an hourly rate of \$100; and 0.50 hours of services by a part-time legal assistant at an hourly rate of \$60 (collectively, claimant's counsel). After considering counsel's fee petition, the administrative law judge found the requested hourly rates for the attorneys and the part-time legal assistant to be reasonable and sufficiently documented, but reduced the hourly rate for the full-time legal assistants to \$75. The administrative law judge approved the number of hours for services performed by Mr. Belcher, Mr. Delph, and Mr. Gilligan, but reduced the number of compensable hours for Mr. Wolfe, the full-time legal assistants, and the part-time legal assistant. The administrative law judge approved a total of 24.25 hours for Mr. Wolfe, 29.50 hours for the full-time legal assistants, and 0.25 hours for the part-time legal assistant, and awarded claimant's counsel a total fee of \$11,865.50 for legal services performed while the case was before the Office of Administrative Law Judges. Upon employer's Motion for Reconsideration and for Dismissal or Discovery, the administrative law judge further reduced the number of compensable hours for the full-time legal assistants to 19.50 hours, and awarded an amended attorney fee in the total amount of \$11,115.00.

On appeal, employer contends that the administrative law judge failed to consider appropriate market rate evidence and apply the correct standard in approving counsel's requested hourly rates. Neither claimant's counsel nor the Director, Office of Workers' Compensation Programs, has filed a response brief.<sup>1</sup>

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.<sup>2</sup> See *Abbott v. Director, OWCP*, 13 BLR 1-15 (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"

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<sup>1</sup> We affirm, as unchallenged on appeal, the administrative law judge's determinations regarding the individual time entries and total time awarded for work performed on this case while it was pending before the Office of Administrative Law Judges. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Attorney Fee Order at 2-5; Order Granting Reconsideration at 2-4.

<sup>2</sup> The law of the United States Court of Appeals for the Fourth Circuit is applicable, as the miner was employed in the coal mining industry in West Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(en banc).

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).

In challenging the hourly rates approved by the administrative law judge, employer contends that the administrative law judge failed to require claimant's counsel to produce evidence of the prevailing market rates for services in the relevant geographic area. Employer argues that the administrative law judge erred in basing his decision on the quality of the representation, qualifications of the attorneys, and complexity of the legal issues; in relying on the 2006 Altman Weil "Survey of Law Firm Economics" (Altman Weil Survey); in relying on counsel's past fee awards; and in summarily rejecting the fee awards proffered by employer in which claimant's counsel was awarded lower hourly rates. Employer's Brief at 3-9. Employer's arguments are without merit.

In reviewing counsel's requested hourly rate, the administrative law judge performed the requisite analysis set forth in Section 725.366(b); considered employer's objections and the evidence provided by both parties as to the prevailing market rate for black lung attorneys; and adequately explained his determination that the hourly rates awarded for work performed by the attorneys and legal assistants were reasonable under the facts of this case. Within a proper exercise of his discretion, the administrative law judge relied on the following considerations: past hourly rates received by claimant's counsel; the nature and complexity of the legal issues involved; the quality of the representation; the qualifications and expertise of the attorneys; and the Altman Weil Survey. *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, 24 BLR 2-106 (6th Cir. 2008); Attorney Fee Order at 5-7; Order Granting Reconsideration at 4-5. While acknowledging that the Altman & Weil survey, alone, does not provide sufficient information for a determination of the market rate, the administrative law judge permissibly concluded that this evidence, considered in conjunction with the other factors, including evidence of fees counsel received in the past, was appropriately included within the range of sources from which to ascertain a reasonable rate. *See Cox*, 602 F.3d at 289, 24 BLR at 2-291; *Maggard v. International Coal Group, Knott County, LLC*, 24 BLR 1-172 (2010) (Order); *Bowman v. Bowman Coal Co.*, 24 BLR 1-165, 1-170 n.8 (2010) (Order); *Parks v. Eastern Assoc. Coal Corp.*, 24 BLR 1-177, 1-181 n.5 (2010)

(Order); Attorney Fee Order at 6. Further, because the administrative law judge, within a proper exercise of his discretion, determined that counsel provided sufficient evidence supporting the hourly rates requested as reasonable for work performed before the Office of Administrative Law Judges, we reject employer's assertion that claimant's counsel failed to produce any specific evidence of the prevailing market rates for legal services. *See generally Robinson v. Equifax Information Services, LLC*, 560 F.3d 235, 245 (4th Cir. 2009), *citing Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990)(fee applicant must produce satisfactory specific evidence of the prevailing market rates in the relevant community for the type of work for which he seeks an award). Employer has failed to satisfy its burden of proving that the hourly rates awarded were excessive or that the administrative law judge abused his discretion in this regard. Consequently, we affirm the administrative law judge's award of an attorney fee in the total amount of \$11,115.00.

Accordingly, the administrative law judge's Attorney Fee Order and Order Granting Reconsideration in Part are 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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BETTY JEAN HALL  
Administrative Appeals Judge