BRB No. 12-0652 BLA

GERTRUDE L. LOCKHART (Widow of LEONARD LOCKHART)	)	
Claimant-Respondent	)	
v.	)	
OLD BEN COAL COMPANY	)	
and	)	
SAFECO INSURANCE COMPANY OF AMERICA	)	DATE ISSUED: 07/30/2013
Employer/Surety-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting the Claimant's Request for Modification, Awarding Benefits, of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

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

Barry H. Joyner (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, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer and Safeco Insurance Company of America (Safeco), a surety, appeal the Decision and Order Granting the Claimant's Request for Modification, Awarding Benefits (2009-BLA-05751) of Administrative Law Judge Alice M. Craft, rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). This case involves claimant's request for modification of the previous denial of her survivor's claim,[1] originally filed on October 24, 1996.[2] Director's Exhibits 1, 28.

Claimant's survivor's claim was initially denied by Administrative Law Judge Donald W. Mosser for failure to establish that the miner's death was due to pneumoconiosis, pursuant to 20 C.F.R. §718.205(c). Specifically, Judge Mosser found that claimant failed to establish that the miner's clinical pneumoconiosis caused his death. He further found that chronic obstructive pulmonary disease (COPD) caused the miner's death, but that claimant failed to establish that the miner's COPD was related to coal dust exposure, and therefore, failed to establish that the miner had legal pneumoconiosis, or that legal pneumoconiosis caused the miner's death. Pursuant to claimant's appeal, the Board affirmed the denial of benefits. *Lockhart v. Old Ben Coal Co.*, BRB No. 01-0833 BLA (July 31, 2002) (unpub.).

Claimant filed her request for modification on April 29, 2003. Director's Exhibit 28. The modification proceedings were delayed by the liquidation, in 2004, of employer and its parent, Horizon Natural Resources Company (Horizon). Director's Exhibit 33; *see Old Ben Coal Co. v. OWCP* [*Melvin*], 476 F.3d 418, 23 BLR 2-424 (7th Cir. 2007). In April 2007, the district director notified Safeco of its potential interest in this case as the surety on a bond that employer obtained as a self-insured operator, and informed Safeco of its right to request to intervene as a party-in-interest. *See* 20 C.F.R. §725.360(d); Director's Exhibit 36. Safeco did not formally seek to intervene, but defended against the claim on its merits, while denying that it is a surety for this claim

[1] Claimant is the widow of the miner, who died on October 1, 1996. Director's Exhibit 4. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award on his lifetime claim. Director's Exhibit 1.

[2] The 2010 amendments to the Black Lung Benefits Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, do not apply to this claim.

and challenging the district director's authority to add it as a party. After the case was referred to the administrative law judge, Safeco moved to be dismissed from the case, arguing that it is not a proper party. In an order issued August 10, 2010, Administrative Law Judge Alice M. Craft (the administrative law judge) denied Safeco's motion, and designated it as a party-in-interest.

In her Decision and Order, issued August 17, 2012, the administrative law judge noted that Safeco sought to argue that it is not a surety for this claim, and to challenge the district director's authority to determine its liability. Decision and Order at 4; Hearing Transcript at 8-9. The administrative law judge concluded that she lacked jurisdiction to decide those issues. Decision and Order at 4. Turning to the merits of the claim, the administrative law judge credited the miner with at least forty years of coal mine employment,[3] and found that the medical opinion evidence established that the miner had legal pneumoconiosis, in the form of severe emphysema due to both coal mine dust exposure and smoking, pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge therefore found that claimant established a mistake in a determination of fact, pursuant to 20 C.F.R. §725.310(a). The administrative law judge further found that the miner's death was due to legal pneumoconiosis, pursuant to 20 C.F.R. §718.205(c). The administrative law judge also found that granting modification would render justice under the Act. Accordingly, the administrative law judge granted claimant's modification request, and awarded benefits.

On appeal, Safeco argues that it should be dismissed as a party to this case. Safeco also contends that the administrative law judge erred in finding that the miner had legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and in finding that granting claimant's request for modification renders justice under the Act. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject Safeco's arguments that it should be dismissed from the case, and that the administrative law judge erred by referring to the preamble to the regulations when weighing the medical opinion evidence on the issue of legal pneumoconiosis. Safeco has filed a reply brief, reiterating its arguments on appeal.

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

[3] The miner's last coal mine employment was in Indiana. Miner's Claim Hearing Transcript at 28-29. 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 (1989) (en banc).

U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. Because claimant filed her survivor's claim after January 1, 1982, and before January 1, 2005, she must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *See* 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see Peabody Coal Co. v. Director, OWCP* [*Railey*], 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992).

In a survivor's claim, modification may be based upon a finding of a mistake in a determination of fact pursuant to 20 C.F.R. §725.310. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). In reviewing the record as a whole on modification, an administrative law judge is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971); *see also Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 547, 22 BLR 2-429, 2-453 (7th Cir. 2002).

Safeco as a Party

As an initial matter, Safeco contends that the administrative law judge erred in concluding that she lacked jurisdiction to address Safeco's argument that the district director failed to prove that the surety bond in question covers this claim. Safeco's Brief at 12-13. This argument lacks merit. In essence, Safeco contends that the administrative law judge should have decided whether Safeco is liable on the bond that was identified by the district director. Director's Exhibit 36. As the Director points out, however, the administrative law judge lacked jurisdiction to determine whether the bond is valid, or whether it covers this claim, because those issues are not questions pertaining to

claimant's entitlement to compensation under the Act.[4] *See* 33 U.S.C. §919(a), as incorporated into the Act by 30 U.S.C. §932(a); *Temporary Employment Servs. v. Trinity Marine Grp., Inc.*, 261 F.3d 456, 460-65, 35 BRBS 92, 94-99 (CRT) (5th Cir. 2001); Director's Brief at 3-4. Those issues may only be adjudicated in federal district court, should the Director bring an action to enforce an award of benefits against employer. *See* 28 U.S.C. §§1345, 1352; 30 U.S.C. §934(b)(4)(A); 20 C.F.R. §725.604; *Peabody Coal Co. v. Director, OWCP* [*Ayers*], 40 F.3d 906, 909-10, 19 BLR 2-34, 2-40-43 (7th Cir. 1994).

Safeco also argues that the administrative law judge erred by not addressing its contention that res judicata precludes it from being named a party upon claimant's request for modification. Safeco's Brief at 11-12. Specifically, Safeco contends that, in the original claim proceedings, employer was designated as the responsible operator in this claim, self-insured through Horizon, and that employer's subsequent liquidation does not make that designation a mistake of fact. Safeco's Brief at 12. Therefore, Safeco argues, the "prior finding" that employer is self-insured through Horizon is res judicata, and there is no basis for designating Safeco as a party. *Id*. This argument lacks merit. Claimant sought modification, and her claim remains pending. As a result, neither res judicata nor collateral estoppel could apply to the identity of the surety as a potential party-in-interest in this case, because that issue was not previously litigated and finally decided. *See Freeman v. United Coal Mining Co. v. Director, OWCP* [*Forsythe*], 20 F.3d 289, 293-94, 18 BLR 2-189, 2-195 (7th Cir. 1994); *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999) (en banc); *Sellards v. Director, OWCP*, 17 BLR 1-77, 1-79-80 (1993); Director's Brief at 2-3. Furthermore, contrary to Safeco's view of the proceedings on modification, the Director has not purported to find the prior designation of employer as the responsible operator to be a mistake of fact. The claim is still proceeding against Old Ben Coal Company; the Director merely notified Safeco of its potential interest in this case as the surety on the bond that Old Ben obtained, and he informed Safeco of its right to request to intervene.[5] *See* 20 C.F.R. §725.360(d); Director's Exhibit 36. Therefore, we reject Safeco's argument, and affirm the administrative law judge's designation of Safeco as a party-in-interest.

[4] Safeco itself has conceded, at the hearing before the administrative law judge and in its brief here, that the administrative law judge lacked jurisdiction to determine its liability. Hearing Transcript at 8; Safeco's Brief at 11.

[5] The Director notes that Safeco never formally moved to intervene, but has subsequently appeared and defended the claim. The Director therefore considers that "Safeco is currently a party-in-interest solely on account of its constructive intervention in the case. . . . It is free to discontinue its intervention at any time." Director's Brief at 2.

Legal Pneumoconiosis

Turning to the merits, Safeco argues that the administrative law judge erred in finding, on the basis of the medical opinion evidence, that the miner had legal pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4).[6] The administrative law judge noted that all of the physicians who examined the miner or reviewed his medical treatment records agreed that he had obstructive lung disease, and that he had severe emphysema by the time of his death. Decision and Order at 56-57. Drs. Cohen, Combs, Jones, Perper, and Green opined that both smoking and coal mine dust exposure contributed to the miner's emphysema, and diagnosed him with legal pneumoconiosis. Decision and Order at 55-57. The administrative law judge found their opinions to be well-documented and consistent with both the evidence and the premises underlying the regulations, and thus concluded that their opinions were well-reasoned and sufficient to establish the existence of legal pneumoconiosis. *Id*. at 55-56.

The administrative law judge noted that, in contrast, the physicians relied upon by employer and Safeco opined that smoking was the sole cause of the miner's emphysema, even though the miner had a smoking history of twenty-five to thirty pack years, ending in 1973, and forty years of coal mine employment, ending in 1982. Decision and Order at 57. Drs. Oesterling, Kleinerman, Naeye, Tomashefski, Tuteur, and Branscomb asserted that coal dust exposure does not cause the form of emphysema that the miner had. *Id*. The administrative law judge gave their opinions little weight, reasoning that they were:

> not consistent with the findings by the Department of Labor that the damage caused by smoking and coal dust is based on similar mechanisms, that coal mine dust causes clinically significant obstructive disease even in the absence of clinical pneumoconiosis, and that cigarette smoke and dust exposure have additive effects. . . . Because the Employer's experts' views are outside the consensus of medical opinion represented in the findings of the Department of Labor, I find that their opinions are entitled to little weight.

Id. Therefore, based on the opinions of Drs. Cohen, Combs, Jones, Perper, and Green, the administrative law judge found that claimant established that the miner had legal

[6] Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

pneumoconiosis, and that Judge Mosser's earlier finding to the contrary was a mistake of fact. *Id*.

Safeco first contends that the administrative law judge erred in referring to the preamble to the amended regulations in evaluating the credibility of the conflicting medical opinion evidence. Safeco's Brief at 15-18, 21-22. We disagree. The administrative law judge has discretion to determine whether a medical opinion is supported by accepted scientific evidence, as determined by the Department of Labor when it revised the definition of pneumoconiosis to include obstructive impairments arising out of coal mine employment. *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 490, 23 BLR 2-18, 2-26 (7th Cir. 2004); *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-16, 25 BLR 2-115, 2-129-32 (4th Cir. 2012); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012); *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 24 BLR 2-369 (3d Cir. 2011). Therefore, we reject Safeco's argument.

Safeco also argues that the opinions of Drs. Tuteur, Tomashefski, and Oesterling are not inconsistent with the preamble, and that the administrative law judge therefore erred in discounting them. Safeco's Brief at 19-21. This argument lacks merit. Dr. Tuteur acknowledged that both coal mine dust and tobacco smoke can cause emphysema, but opined that the miner's emphysema was due to smoking. Employer's Exhibit 32 at 3-5. In reaching that conclusion, Dr. Tuteur reasoned that a person with the miner's smoking history has a twenty percent chance of developing significant COPD, but that the odds of coal dust exposure ever causing COPD are much lower. *Id*. at 4-5. The administrative law judge reasonably discredited that opinion for implying that "the cause in an individual case must be either smoking, or coal dust, a false dichotomy," Decision and Order at 57, contrary to the Department of Labor's recognition in the preamble that the effects of coal mine dust exposure and smoking are additive. *See* 65 Fed. Reg. at 79,939-41; *see also* 20 C.F.R. §718.201(a)(2), (b); *Beeler*, 521 F.3d at 726, 24 BLR at 2-103; Decision and Order at 55, 57. Similarly, the administrative law judge permissibly discredited all of the medical opinions employer relies on, including those of Drs. Tomashefski and Oesterling, for failing to adequately explain "why the Miner's 40 years of coal dust exposure should be excluded as a contributing cause to his severe obstructive disease," given the definition of legal pneumoconiosis, which is not limited to impairments directly caused by dust exposure in coal mine employment, but includes those that are significantly related to, or substantially aggravated by it. *See* 20 C.F.R. §718.201(a)(2), (b); 65 Fed. Reg. at 79,943-44; Decision and Order at 57.

Next, Safeco contends that the opinions of Drs. Cohen, Combs, Jones, Perper, and Green were speculative, and therefore, insufficient to support a finding of legal pneumoconiosis. Safeco's Brief at 22-23. Safeco argues that because coal dust could

have caused the miner's emphysema, these physicians automatically assumed that it did, without connecting the miner's impairment to his coal dust exposure. *Id*. We disagree. The administrative law judge set forth the physicians' opinions in detail, noting the objective medical evidence each relied upon in concluding that the miner suffered from legal pneumoconiosis. *See* 20 C.F.R. §718.202(a)(4); Decision and Order at 6-50. The administrative law judge acted within her discretion in finding the opinions of Drs. Cohen, Combs, Jones, Perper and Green to be well-documented, consistent with the medical evidence, and reasoned. *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 893-94, 13 BLR 2-348, 2-355-56 (7th Cir. 1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lucostic v. U. S. Steel Corp.*, 8 BLR 1-46, 1-47 (1985); Decision and Order at 55-57.

Finally, Safeco argues that the administrative law judge erred in crediting the opinions of Drs. Perper and Green, asserting that those physicians relied on inaccurate information regarding the miner's smoking history and exposure to coal dust. Safeco's Brief at 23-24. This argument lacks merit. Dr. Perper believed that the miner worked at underground and strip mines for forty years, and that he smoked a pack of cigarettes or less a day for twenty to thirty years before quitting in 1971. Director's Exhibit 28 at 9-11; Decision and Order at 15. Dr. Green believed that the miner had forty years of underground coal mine employment. Director's Exhibit 28 at 136-37; Decision and Order at 18. The doctors' understandings of the miner's smoking and employment histories are not materially inconsistent with the findings of the administrative law judge, that the miner had "at most a 25 to 30 pack-year smoking history ending by 1973," and her consideration of the miner's testimony that his dust exposure was the same at his underground and surface mining jobs. Miner's Hearing Transcript at 40; Decision and Order at 5. Because employer has not shown that Drs. Perper and Green relied on inaccurate smoking or work histories that affected their opinions regarding the existence of legal pneumoconiosis, we reject employer's arguments.

The administrative law judge reasonably concluded, after considering and weighing the evidence, that coal mine dust exposure contributed to the miner's obstructive pulmonary disease. *See Poole*, 897 F.2d at 893-94, 13 BLR at 2-355-56; *Clark*, 12 BLR at 1-155. Accordingly, we affirm, as supported by substantial evidence, the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4). Consequently, we also affirm the administrative law judge's determination that the evidence established a mistake in a determination of fact, pursuant to 20 C.F.R. §725.310(a). *See Hilliard*, 292 F.3d at 547, 22 BLR at 2-453.

Safeco also contends that the administrative law judge's finding, that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), must be vacated because it is based on an erroneous finding that the miner had legal pneumoconiosis.

Safeco's Brief at 24, n.6. Because we have affirmed the administrative law judge's finding of legal pneumoconiosis, this argument lacks merit. We therefore affirm the administrative law judge's otherwise unchallenged finding that the miner's death was due to pneumoconiosis, pursuant to 20 C.F.R. 718.205(c). Decision and Order at 58-59.

Justice Under The Act

Safeco contends that, upon finding a mistake of fact, the administrative law erred in determining that granting claimant's request for modification would render justice under the Act. We disagree.

Modification of a claim should not be granted automatically upon finding that a mistake was made in an earlier determination, but only when the administrative law judge concludes that doing so will render justice under the Act. *See* 20 C.F.R. §725.310(a); *Banks v. Chi. Grain Trimmers Ass'n*, 390 U.S. 459, 464 (1968) (recognizing that the purpose of modification is to "render justice"). The administrative law judge has broad discretion in determining whether to grant modification. *O'Keeffe*, 404 U.S. at 256; *Hilliard*, 292 F.3d at 547, 22 BLR at 2-453. In determining whether modification will render justice under the Act, the administrative law judge should consider all relevant factors, including the preference, under the Act, for accuracy; the interest in finality; any delay in seeking modification; the diligence and motive of the requesting party; the quality of the new evidence; and mootness. *See Hilliard*, 292 F.3d at 546-47, 22 BLR at 2-452-54; *Westmoreland Coal Co. v. Sharpe*, 692 F. 3d 317, 25 BLR 2-157 (4th Cir. 2012), *cert. denied*, 570 U.S. (2013).

In this case, the administrative law judge determined that the need for accuracy, the quality of the new evidence, and claimant's diligence and motive all weighed in favor of granting modification, and that granting her request would not be futile or moot. Decision and Order at 59-60. Thus, the administrative law judge found that granting modification renders justice under the Act. *Id*. at 60.

Safeco argues that the administrative law judge's conclusion that claimant was diligent was improperly based only on the timeliness of claimant's request for modification. Safeco's Brief at 13-14. Safeco also argues that the administrative law judge erred in determining that there was no evidence that claimant had an improper motive, because claimant "may have" sought modification to avoid overpayment proceedings. Safeco's Brief at 14-15. These arguments are speculative and lack merit. Safeco offers nothing in the record to support its allegation that claimant was not diligent, or that she did, in fact, have an improper motive. Therefore, we reject the allegation of error.

Safeco also argues that the preamble represents a change in law from the time of claimant's original claim, and that a change in law is not a proper basis for granting

modification. Safeco's Brief at 14. This argument also lacks merit. As explained above, the administrative law judge permissibly consulted the preamble when she reviewed the medical opinion evidence and found that claimant established a mistake in a determination of fact. A mistake of fact is a proper basis for modification. 20 C.F.R. §725.310. Therefore, we affirm the administrative law judge's finding that granting claimant's request for modification renders justice under the Act. *See Hilliard*, 292 F.3d at 546-47, 22 BLR at 2-452-54. Accordingly, we affirm the award of survivor's benefits.

Attorney Fees

Claimant's counsel has filed an itemized statement requesting fees for services performed before the Board from September 15, 1999 to December 4, 2000, in BRB No. 99-1300 BLA, and from July 19, 2001 to July 31, 2002, in BRB No. 01-0833 BLA. Counsel requests a fee of $11,808.00 for 49.20 hours of legal services at an hourly rate of $240.00. Safeco objects to the fee petition, arguing that claimant's counsel has not established that an hourly rate of $240.00 is the prevailing market rate. Safeco's Opposition at 1-3. We disagree.

In her fee petition, claimant's counsel provided affidavits from other lawyers who are familiar with her skills and, more generally, with black lung work. Affidavits from lawyers who are familiar with the skills of the fee applicant and with the type of work performed in the relevant community are appropriate evidence to consider in establishing a market rate. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 289, 24 BLR 2-269, 2-291 (4th Cir. 2010); *Maggard v. Int'l Coal Grp., Knott Cnty., LLC*, 24 BLR 1-172, 1-175 n.20 (2010) (Order); *Bowman v. Bowman Coal Co.*, 24 BLR 1-165 (2010) (Order). In support of her requested hourly rate, claimant's counsel has also submitted a list of thirty-one federal black lung cases, from 2011 to January 2013, in which she was awarded fees at an hourly rate of $240.00. Evidence of fees received in the past may be consulted for guidance in determining a prevailing market rate. *See Amax Coal Co. v. Director, OWCP* [*Chubb*], 312 F.3d 882, 894-95, 22 BLR 2-514, 2-535-36 (7th Cir. 2002); *Peabody Coal Co. v. Estate of J.T. Goodloe*, 299 F.3d 666, 672, 22 BLR 2-483, 2-493 (7th Cir. 2002); *Maggard v. Int'l Coal Grp., Knott Cnty., LLC*, 24 BLR 1-203, 1-205 (2010)(Order). Therefore, we conclude that claimant's counsel has provided sufficient evidence of a market rate for an attorney of her expertise and experience in her geographic area for appellate work before the Board, and we find the requested hourly rate to be reasonable.

Safeco also objects to the number of hours for which claimant's counsel seeks fees. Safeco's Opposition at 4. Specifically, Safeco challenges the time entries for the periods between October 22 and 28, 1999, December 20 and 22, 1999, August 22 and 27,

2001, and October 19 and 22, 2001, on the ground that they are not sufficiently specific.[7] Safeco, however, does not argue that any of the services listed by counsel on those dates were not necessary to the case or excessive in amount, nor do we find them to be. We thus find the hours claimed by counsel to be reasonable in light of the services performed. *See Brodhead v. Director, OWCP*, 17 BLR 1-138, 1-139-140 (1993).

Therefore, claimant's counsel is awarded a total fee of $11,808.00 for 49.20 hours of services performed before the Board in BRB Nos. 99-1300 BLA and 01-0833 BLA, to be paid directly to claimant's counsel by employer. 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §802.203.

Accordingly, the administrative law judge's Decision and Order Granting the Claimant's Request for Modification, Awarding Benefits, is affirmed, and claimant's counsel is awarded a fee of $11,808.00.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

[7] These entries list multiple services performed over a period of several days, related to preparing a petition for review and supporting brief, and preparing a reply brief, in both appeals. Claimant's Fee Petition at 2-3.