

BRB No. 11-0602 BLA

JAMES D. BURRIS)
)
 Claimant-Petitioner)
)
 v.)
)
 CONSOLIDATION COAL COMPANY)
) DATE ISSUED: 05/10/2012
 and)
)
 WELLS FARGO DISABILITY)
 MANAGEMENT)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Supplemental Order Awarding Attorney's Fees and the Supplemental Order Awarding Additional Attorney's Fees of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

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

Cheryl L. Intravaia (Feirich/Mager/Green/Ryan), Carbondale, Illinois, for employer.

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

PER CURIAM:

Claimant's counsel appeals the Supplemental Order Awarding Attorney's Fees and the Supplemental Order Awarding Additional Attorney's Fees (07-BLA-5523) of Administrative Law Judge Paul C. Johnson, Jr., in connection with 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).

In his initial Supplemental Order, the administrative law judge considered counsel's fee petition, and employer's objections thereto, and awarded claimant's counsel a total fee of \$7,069.11 for 23.95 hours of legal services at an hourly rate of \$240.00, and \$1,321.11 in expenses.

Claimant moved for reconsideration of the administrative law judge's determination as to the number of hours awarded. In a Supplemental Order dated August 28, 2008, the administrative law judge found that claimant's counsel was entitled to compensation for an additional 10.0 hours of legal services at an hourly rate of \$240.00. The administrative law judge, therefore, awarded claimant's counsel a total fee of \$9,469.11.

On appeal, claimant's counsel contends that the administrative law judge erred in reducing the amount of her fee request. Employer responds in support of the administrative law judge's attorney's fee award. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The amount of an attorney's fee awarded 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.¹ *Abbott v. Director, OWCP*, 13 BLR 1-15, 1-16 (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).

The sole issue before the Board is whether the administrative law judge abused his discretion in disallowing compensation for 6.75 of the 20.75 hours of legal services provided by claimant's counsel over a seven-day period from February 10, 2010 to

¹ Claimant's coal mine employment was in Illinois. Administrative Law Judge's January 6, 2011, Decision and Order at 20. Accordingly, this case arises within the jurisdiction 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).

February 16, 2010. In her fee petition, claimant's counsel indicated that she spent a total of 20.75 hours over this time period,² performing the following legal services:

Prepare and file Claimant's post-hearing brief: outline procedural history, miner's history, issues; review and analyze rulings on evidentiary issues and the medical evidence; draft, research, review & edit; letter to client.

Counsel's Fee Petition at 5.

In his initial Supplemental Order, dated March 21, 2011, the administrative law judge disapproved 16.75 of the requested 20.75 hours requested for this time period, because the time entry was not sufficiently itemized:

[Claimant's counsel] has not sufficiently broken out the time for each task for me to determine whether the requested fee is reasonable. A single entry for numerous tasks simply does not provide the level of detail necessary to evaluate the claim. Nonetheless, I decline to disapprove it entirely. [Claimant's counsel] submitted a thorough and detailed closing argument, and it appears that the block entry is for activities associated with that document. The document reflects a close attention to detail and a successful effort at marshaling the best arguments in support of her client's position, and I find that she is entitled to 4.0 hours for its preparation. The remaining 16.75 hours are disapproved.

Supplemental Order Awarding Attorney's Fees at 3.

Claimant's counsel moved for reconsideration, arguing that the "total hours billed for writing the brief should be approved because it is perfectly reasonable." Counsel's Motion for Reconsideration at 1. Claimant's counsel further noted that she could not recall "a single time that an [administrative law judge] questioned [her] billing entry format for brief writing or the amount of time expended and penalized the fee applicant for it." *Id.* at 2.

In a Supplemental Order dated May 3, 2011, the administrative law judge modified the amount of the fee award, but explained that counsel's time entry was still not sufficiently itemized to be granted in full:

Counsel in this case has had two opportunities to show that the 20.75 hours billed for the preparation of the post-hearing brief is a reasonable number of

² Although claimant's counsel indicated that she spent a total of 23.75 hours on these activities, she sought compensation for only 20.75 hours. Fee Petition at 5.

hours, but has provided no additional detail for the questioned billing entry. She has, however, persuaded me that my initial award of 4.0 hours was too low. Some portion of the closing brief consisted of legal argument that was substantially the same as that provided in any case for black lung benefits, but a substantial amount of the brief required a review of the record and the application of the specific facts of this case to that law. Accordingly, I find that an award based on an additional 10.0 hours, for a total of 14.0 hours, is appropriate.

Supplemental Order Awarding Additional Attorney's Fees at 2. Thus, the administrative law judge awarded claimant's counsel compensation for 14.0 of the total of 20.75 hours that she sought for legal services provided from February 10, 2010 to February 16, 2010.

Claimant argues that the administrative law judge provided "an inadequate reason for reducing [her] fee request," resulting in a decision that was "arbitrary, capricious, and an abuse of discretion." Counsel's Brief at 7. An application for an attorney's fee filed with an administrative law judge "shall be supported by a complete statement of the extent and character of the necessary work done." 20 C.F.R. §725.366(a). The United States Court of Appeals for the Seventh Circuit has held that the question of the reasonableness of time spent by a lawyer on a particular task in the course of litigation is reviewed "under a highly deferential version of the 'abuse of discretion' standard." *Zeigler Coal Co. v. Director, OWCP [Hawker]*, 326 F.3d 894, 902 (7th Cir. 2003). The Seventh Circuit has further explained that "not only is the [ALJ] in a much better position than the appellate court to make this determination, but neither the stakes nor the interest in uniform determination are so great as to justify microscopic appellate scrutiny." *Id.*, quoting *Ustrak v. Fairman*, 851 F.2d 983, 987 (7th Cir. 1988)(brackets in original).

In this case, the administrative law judge found that counsel's use of a single entry for numerous tasks over a seven-day period did "not provide the level of detail necessary to evaluate the claim." Supplemental Order Awarding Attorney's Fees at 3. Instead of breaking down the amount of time spent performing the various tasks over the seven-day time period in her motion for reconsideration, counsel argued that the total amount of time spent was reasonable. Under these circumstances, claimant's counsel has not demonstrated that the administrative law judge abused his discretion in requiring sufficient detail for him to evaluate the reasonableness of counsel's request for 20.75 hours of legal services over a seven-day time period. *See Hawker*, 326 F.3d at 902; *Lanning v. Director, OWCP*, 7 BLR 1-314, 1-316 (1984). Moreover, given counsel's failure to provide the administrative law judge with the requested clarification in her motion for reconsideration, we hold that the administrative law judge did not abuse his

discretion by refusing to award 6.75 of the 20.75 hours of legal services requested from February 10, 2010 to February 16, 2010.³ *Id.*

Accordingly, the administrative law judge's Supplemental Order Awarding Attorney's Fees, and the Supplemental Order Awarding Additional Attorney's Fees, are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

³ The regulations provide that a request for reconsideration of a fee award "shall contain supporting statements or information pertinent to any increase or decrease requested." 20 C.F.R. §725.366(e).