



BRB No. 15-0335 BLA

DOUGLAS AKINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DRUMMOND COMPANY,	)	DATE ISSUED: 05/10/2016
INCORPORATED	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Proposed Order - Supplemental Award - Fee for Legal Services of Jennifer J. Jackson, Senior Claims Examiner, United States Department of Labor.

Robert O. Bryan (Nelson, Bryan & Jones), Jasper, Alabama, for claimant.

Will A. Smith (Maynard, Cooper & Gale, P.C.), Birmingham, Alabama, for employer.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Proposed Order - Supplemental Award - Fee for Legal Services (Supplemental Award) of Senior Claims Examiner Jennifer J. Jackson (the district director) on an attorney fee petition filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §901-944 (2012) (the Act). Claimant's counsel (counsel) requested an attorney fee in the amount of \$13,977.07, representing 37 hours of legal services rendered between September 5, 2013 and March 17, 2015 before the district director at an hourly rate of \$330.00, 7.50 hours of paralegal

services at an hourly rate of \$185.00, and \$379.57 in expenses. After considering the regulatory criteria at 20 C.F.R. §725.366(b) and employer's objections to the fee petition, the district director reduced the hourly rates and the number of hours requested, and awarded counsel a fee in the amount of \$8,244.70, representing 23.50 hours of legal services at an hourly rate of \$300.00, 6.25 hours of paralegal service at an hourly rate of \$150.00, and \$257.50 in expenses.

In appealing this award, employer contends that the administrative law judge erred in finding that \$300.00 was a reasonable hourly rate for counsel's legal services. Counsel has not responded to this appeal.<sup>1</sup> The Director, Office of Workers' Compensation Programs, as a party-in-interest, has filed a letter indicating that he will not participate in this appeal.<sup>2</sup>

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), 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. *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. Kaiser Steel Corp.*, 8 BLR 1-339, 1-343 (1985).

In challenging the district director's Supplemental Award, employer asserts that the record contains no evidence establishing counsel's customary billing rate or his qualifications in order for the district director to assess the reasonableness of the requested hourly rate. Specifically, employer argues that in determining an appropriate hourly rate, the district director erred by failing to consider that counsel's actual geographic location is in Jasper, Alabama, instead of "the greater Birmingham metropolitan area," as counsel alleged in his fee petition. Employer suggests, therefore, that the customary billing rate of a legal practice located in Jasper, Alabama, which is approximately forty miles from Birmingham, is less than that of attorneys whose offices are located in Birmingham. Noting that the district director disallowed specific time

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<sup>1</sup> On August 4, 2015, counsel filed a Motion for Additional Time to Respond to Employer/Petitioner's Petition for Review. By Order dated August 19, 2015, the Board granted counsel's request, but counsel has not filed a response brief.

<sup>2</sup> We affirm, as unchallenged on appeal, the district director's determination of \$150.00 as a reasonable hourly rate for paralegal services, and her approval of 23.50 hours of compensable legal services and \$257.20 in expenses. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); see also *Barr v. Director, OWCP*, 7 BLR 1-367, 1-369 (1984); *Robel v. Director, OWCP*, 7 BLR 1-358 (1984); Supplemental Award at 3.

entries as duplicative and excessive, employer also avers that counsel's request for certain services that were deemed uncompensable affirmatively demonstrates his deficient qualifications and lack of experience in black lung law. Employer's Brief at 3-6.

It is well-established that the adjudicating official must determine the appropriate fee award by considering the regulatory criteria set forth at 20 C.F.R. §725.366(b). These factors include the quality of representation, qualifications of the representatives, complexity of the legal issues involved, level of proceedings to which the claim was raised, and the level of the claim at which counsel entered the proceedings. 20 C.F.R. §725.366(b); *U.S. Dept. of Labor v. Triplett*, 494 U.S. 715, 13 BLR 2-364 (1990); *see Blankenship v. Schweiker*, 676 F.2d 116, 117-118 (4th Cir. 1982); *Pritt v. Director, OWCP*, 9 BLR 1-159 (1986); *Allen v. Director, OWCP*, 7 BLR 1-330 (1984).

In the present case, counsel stated that his law firm was located in Jasper, Alabama, and that a reasonable and customary rate in the "greater Birmingham metropolitan area" for counsel, a named partner with significant black lung litigation experience spanning more than two decades, was \$330.00 per hour. Counsel's Fee Petition at 2, 3. Counsel attached a "Timekeeper Detail" from employer's counsel to his fee petition, and noted, by comparison, that employer's counsel had ten years of legal experience and billed at the same rate of \$330.00 per hour.<sup>3</sup> Counsel's Fee Petition at 2 n.1. After considering, *inter alia*, "the complexity of the issues, the qualifications of the representative, and the level at which the claim was decided," in addition to reducing the number of hours requested, the district director acted within her discretion in reducing counsel's requested rate of \$330.00 per hour to \$300.00 per hour in determining a reasonable attorney fee for counsel's services. Supplemental Award at 2-3. As employer has demonstrated no abuse of the district director's discretion, we affirm her finding that \$300.00 is a reasonable hourly rate for counsel's legal services. *See Lenig v. Director, OWCP*, 9 BLR 1-147, 1-148 (1986). Consequently, we affirm the district director's award of a total fee of \$8,244.70, representing 23.50 hours of legal services at an hourly

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<sup>3</sup> Employer's counsel argues that the Timekeeper Detail does not accurately reflect his billable rate in this case, stating that he has never billed this employer \$330.00 per hour for legal services. Employer's Brief, Exhibit F. Nevertheless, in its filing before the district director, employer's counsel conceded that he "use[s] this rate as a basis from which to determine the appropriate billable rate in a particular civil case," after taking into consideration several factors relating to the case. Employer's Response, Exhibit B at 4. However, despite employer's counsel's assertion that his accounting software "automatically applies" a substantial reduction in the billable rates charged to this employer, *id.*, he has not explained how the Timekeeper Detail renders a fee of \$300.00 per hour to claimant's counsel as excessive.

rate of \$300.00, 6.25 hours of paralegal services at an hourly rate of \$150.00, and \$257.20 in expenses.

Accordingly, we affirm the Proposed Order - Supplemental Award - Fee for Legal Services of the district director.

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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GREG J. BUZZARD  
Administrative Appeals Judge

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JONATHAN ROLFE  
Administrative Appeals Judge