BRB No. 04-0108 BLA

JOYCE M. FEASTER (Widow of GEORGE FEASTER) Claimant-Petitioner v. KOCHER COAL COMPANY and LAKAWANA CASUALTY COMPANY Employer/Carrier- Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Respondent	)	DATE ISSUED: 10/29/2004 DECISION and ORDER

Appeal of the Proposed Order Supplemental Award Fee for Legal Services of Colleen S. Smalley, District Director, United States Department of Labor.

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

Sarah M. Hurley (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 BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant's counsel appeals the Proposed Order Supplemental Award Fee for Legal Services of District Director Colleen S. Smalley on an award of attorney's fees for services performed in a successful prosecution of a survivor's claim before the district director. The district director awarded claimant's counsel a fee of $4,862.50 for 38.9 hours of services at a rate of $125 per hour, payable by claimant.

On appeal, claimant's counsel challenges the district director's determination to disallow compensation for 17.45 hours for specific legal services identified on the fee petition. Claimant's counsel also challenges the district director's determination that claimant is responsible for the payment of counsel's fees. Employer has not responded to this appeal. The Director, Office of Workers' Compensation Programs, responds asserting that the district director's award of attorney's fees should be affirmed.[1]

An award of attorney's fees is discretionary and will be set aside only if counsel demonstrates that the award is arbitrary, capricious, or an abuse of discretion. *See Abbott v. Director, OWCP*, 13 BLR 1-15 (1989); *Lenig v. Director, OWCP*, 9 BLR 1-147 (1986) *citing Marcum v. Director, OWCP*, 2 BLR 1-894 (1980).

Claimant's counsel (counsel) challenges the district director's determination to disallow compensation for 17.45 hours of legal services. The district director reduced, from 18.7 hours to 8 hours, the amount of time compensable for work performed between March 19, 2002 and April 26, 2002 to complete interrogatories served on claimant by the employer. First, counsel asserts that all of the time requested was actually spent completing the interrogatories and was necessary to establishing claimant's entitlement. The record contains interrogatories, consisting of 26 questions, most of which request routine information duplicative of information contained in the miner's case. Counsel also represented the miner in his claim. Moreover, the fee petition reflects that counsel has not requested time for the submission of the answers to the interrogatories, and answers to the interrogatories are not of record. These facts call into question the necessity of the work. An adjudication officer, may, within his discretion, reduce the number of compensable hours where he finds that the amount of time for which compensation is sought is excessive or unreasonable. *See Matulevich v. Director, OWCP*,

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[1]Claimant's counsel does not challenge the district director's finding that the hourly rate of $175 requested by counsel be reduced to $125. We affirm this finding as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

9 BLR 1-152 (1986); *Lanning v. Director, OWCP*, 7 BLR 1- 314 (1984); *see also Velasquez v. Director, OWCP*, 844 F. 2d 738, 11 BLR 2-134 (10th Cir. 1988). We affirm, therefore, the district director's determination to reduce the number of compensable hours from 18.7 hours to 8 hours to answer interrogatories, as a permissible exercise of her discretion.

Second, counsel challenges the district director's determination to disallow 5 hours of legal services on March 5, 2002 for preparation of a letter to Dr. Kraynak and for "arranging the file." The district director denied compensation for the time on two grounds. She found that some of the time requested was duplicative of the 1 hour for which counsel was compensated in the March 7, 2002 entry, for preparing the same letter to Dr. Kraynak, a finding that counsel does not challenge. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). She also found, however, that the remaining time was administrative in nature, and thus, not compensable. Counsel challenges the district director's disallowance of 4 hours to arrange the file on the grounds that this work was administrative in nature. Counsel argues that the file was voluminous and that reviewing the file was necessary to the success of the case. Counsel argues further that the claim itself was complex and that it is not an administrative function to rearrange the file. Claimant's Counsel's Brief at 2. The burden is on claimant's counsel to show that the work for which compensation is sought is necessary to establishing entitlement. *Wade v. Director, OWCP*, 7 BLR 1-334 (1984). While counsel asserts that the fact that the file was voluminous and had to be rearranged dictates that this work is compensable, we disagree. We hold that the district director reasonably found that counsel has failed to establish that this work was necessary to establish claimant's entitlement to benefits. We affirm , therefore, the district director's determination to disallow the 5 hours requested by counsel for work performed on March 5, 2002, as within the district director's discretion, *see Matulevich*, 9 BLR at 1-153; *Lanning*, 7 BLR at 1-316-317.

Third, counsel challenges the district director's determination to disallow .25 hours for a telephone call made on March 18, 2002 to Johnstown, Pennsylvania on the ground that the party called and the purpose of the call were not indicated by counsel. Counsel's entire argument before the Board on this issue is: "The March 18, 2002 call to Johnstown was made." Claimant's Counsel's Brief at 2. An attorney has the burden of filing a complete statement which includes the extent and character of the work, as well as all of the information required for the fact-finder to render a determination as to whether the work was necessary. *See Cox v. Director, OWCP*, 7 BLR 1-810 (1985). We affirm the district director's determination to disallow the .25 hours requested for the call made on March 18, 2002, as counsel has failed to provide any information regarding the party called or the purpose of the call. *See Cox*, 7 BLR at 1-812-813; *Wade*, 7 BLR at 1-336.

Fourth, counsel challenges the district director's disallowance of 1.5 hours of services performed on October 25, 2002, as duplicative of services performed on October 23, 2002. Counsel's fee petition contains the following two items: October 23, 2002, "Send letter to Miller enclosing deposition of Dr. Kraynak 1 [hour]." October 25, 2002, "Send bill- steno to client. Send out depo to FBL office. 1.5 [hours]." The district director found that the October 25, 2002 entry was duplicative of the October 23, 2002 entry, and that a billing action is administrative in nature. The district director denied the October 25, 2002 entry on both of these bases. Counsel asserts the following: "The 1.5 hour entry for October 25, 2002 was not a duplicate entry of October 23, 2002 (sic) was not administrative. The October 23, 2002 work was in preparation for sending of a letter to Mr. Miller and then the October 25, 2002 entry was further work on the file and in sending the Deposition to Mr. Miller and sending out a Steno bill to Claimant." Claimant's Counsel's Brief at 2. Initially, we affirm the district director's determination to disallow the time spent in sending out the stenographer's bill, a purely administrative function, as within her discretion. *See Brown v. Director, OWCP*, 3 BLR 1-95, 1-98 (1979); *Hamby v. Director, OWCP*, 2 BLR 1-889, 1-890-891 (1980). The record reflects that "Mr. Miller" refers to "Mr. Robert Miller", a claims examiner in the Office of Workers' Compensation Programs, Department of Labor. The record contains a one paragraph letter from counsel to Mr. Robert Miller dated October 23, 2002. Thus, we affirm the district director's determination to disallow compensation for 1.5 hours of services on October 25, 2002, and to award compensation for a total of 1 hour for the work performed on October 23, 2002, as within her discretion. *See Abbott*, 13 BLR at 1-16; *Lenig*, 9 BLR at 1-148.

We affirm, therefore, the district director's disallowance of 17.45 hours of services and, accordingly, we affirm her award of an attorney's fee of $4,862.50 for 38.9 hours of legal services at a rate of $125 per hour.

Finally, claimant's counsel challenges the district director's determination to hold claimant liable for the attorney's fee award. Counsel asserts that because employer did not accept liability for claimant's benefits in a timely manner, employer should be held responsible for the payment of counsel's fees. The Director asserts that employer is not liable for counsel's attorney's fees because there was never an adversarial relationship between claimant and employer, as defined by the regulations. Claimant filed her survivor's claim with the Department of Labor on March 13, 2002. Employer received notice of the claim on May 31, 2002. The parties then developed the evidence of record, including the deposition of Dr. Kraynak. Thereafter, the Department of Labor submitted a schedule for the submission of evidence to the parties, including employer, on March 12, 2003. Twelve days later, on March 24, 2003, employer accepted liability for survivor's benefits.

As, the Director specifically argues, the revised black lung regulations governing liability for attorney's fees provide that a responsible operator is liable for attorney's fees only if the liable party created or acquiesced in the creation of an adversarial relationship. 20 C.F.R. §725.367(a). An adversarial relationship arises when the responsible operator fails to accept the claimant's entitlement to benefits within 30 days after the district director issues a schedule for the submission of additional evidence. 20 C.F.R. §§725.410(a), 725.412(b). As the Director accurately asserts, in this case the operator accepted claimant's eligibility for benefits within 30 days of the issuance of the schedule for the submission of additional evidence, such that an adversarial relationship was not created within the meaning of the regulations at 20 C.F.R. §§725.367(a); 725.410(a) and 725.412(b). Thus, as the Director asserts, claimant is liable for the payment of counsel's attorney's fees in this case. We affirm, therefore, the district director's determination that claimant is liable for counsel's fee award. 20 C.F.R. §§725.367; 725.410(a); 725.412(b).

Accordingly, the District Director's Proposed Order Supplemental Award Fee for Legal Services is 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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JUDITH S. BOGGS
Administrative Appeals Judge