

BRB No. 06-0245 BLA

RUSSELL WALLEN)
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 Claimant-Petitioner)
)
 v.) DATE ISSUED: 10/24/2006
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the October 28, 2005 Proposed Order - Supplemental Award - Fee for Legal Services and the November 15, 2005 Proposed Order - Supplemental Award - Fee for Legal Services of Mary B. Tackett, Senior Claims Examiner, Office of the District Director, United States Department of Labor.

William Lawrence Roberts (William Lawrence Roberts, P.S.C.), Pikeville, Kentucky, for claimant.

Rita Roppolo (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 HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant's counsel appeals an October 28, 2005 Proposed Order - Supplemental Award - Fee for Legal Services and a November 15, 2005 Proposed Order - Supplemental Award - Fee for Legal Services, awarding attorney's fees for legal services performed in securing claimant an award of benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). Claimant's counsel filed a complete, itemized fee petition with the district director requesting a total fee of \$1,875.00 for 7.50 hours of work at an hourly rate of \$250.00. Upon consideration of the fee petition, in an October 28, 2005 Proposed Order, Senior Claims

Examiner Mary B. Tackett, on behalf of the district director, found \$150.00 to be a reasonable hourly rate and reduced the hours of work by three-quarters of an hour, thereby disallowing the request for compensation for work performed before the Office of Administrative Law Judges. Thus, she awarded claimant's counsel a total fee of \$1,012.50 for 6.75 hours of work. On reconsideration, in a November 15, 2005 Proposed Order, Senior Claims Examiner Tackett instead found \$200.00 to be a reasonable hourly rate. Thus, she found the sum of \$1,350.00 to be reasonable for 6.75 hours of work performed before her by claimant's counsel at an hourly rate of \$200.00. Consequently, claimant's counsel was awarded the additional sum of \$337.50, the difference between the October 28, 2005 award of attorney's fees and the November 15, 2005 award of attorney's fees.

On appeal, claimant's counsel asserts that the approved hourly rate of \$200.00 is unreasonable, given that he has received attorney's fees in the range of \$225.00 to \$250.00 per hour in other cases. The Director, Office of Workers' Compensation Programs, has responded by letter brief, urging affirmance of the award of attorney's fees.¹

The award of an attorney's fee 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. *See Abbott v. Director, OWCP*, 13 BLR 1-15 (1989); *Marcum v. Director, OWCP*, 2 BLR 1-894 (1980).

In the October 28, 2005 Proposed Order, Senior Claims Examiner Tackett reduced the requested hourly rate from \$250.00 to \$150.00, on the basis that she found that the work performed by claimant's counsel was for a routine case and did not require special ability or effort. Senior Claims Examiner Tackett also found that the approved rate is comparable to that being charged by other highly qualified attorneys in the same geographical region who have considerable experience in handling Federal Black Lung claims. On reconsideration, in the subsequent Proposed Order dated November 15, 2005, Senior Claims Examiner Tackett increased the approved hourly rate from \$150.00 to \$200.00, based on the complexity of the case, the amount of time involved and the level of administrative proceedings to which the claim was carried. Other than generally asserting that he has been awarded attorney's fees based on the hourly rates of \$225.00 and \$250.00 in other cases before the Office of Administrative Law Judges and the Board, claimant's counsel raises no allegation of error in the award of attorney's fees by Senior Claims Examiner Tackett. We affirm Senior Claims Examiner Tackett's reduction of claimant's counsel's requested hourly rate from \$250.00 to \$200.00, as she considered the factors contained at 20 C.F.R. §725.366(b) and, within her discretion, determined the reasonable hourly rate to be \$200.00. *See Jones v. Badger Coal*

¹We affirm Senior Claims Examiner Mary B. Tackett's determination, that three-quarters of an hour is disallowed because it is a request for services performed before an administrative law judge, as it is unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Co., 21 BLR 1-102 (1998)(*en banc*); *Pritt v. Director, OWCP*, 9 BLR 1-159 (1986); *Gillman v. Director, OWCP*, 9 BLR 1-7 (1986). Because claimant's counsel has not demonstrated an abuse of discretion in Senior Claims Examiner Tackett's award of attorney's fees, based on her determination that \$200.00 is a reasonable hourly rate, the award is affirmed.

Accordingly, Senior Claims Examiner Tackett's award of attorney's fees is affirmed.

SO ORDERED.

NANCY S. DOLDER
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge