

BRB No. 06-0489 BLA

JERRY L. CAMPANELLA)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BLACKSTAR MINING COMPANY)	DATE ISSUED: 10/30/2006
)	
Employer)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Supplemental Decision and Order – Attorney Fee of Harry Skidmore, District Director, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Allen H. Feldman, 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 (counsel) appeals the Supplemental Decision and Order granting attorney fees of District Director Harry Skidmore (the district director) 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). After successfully establishing claimant's entitlement to benefits, counsel submitted an application for an attorney's fee in the amount of \$3,813.00, representing 15.25 hours of services at the rate of \$250.00 per hour. On November 17, 2005, the district director disallowed 2.50 hours of services rendered as excessive, and reduced the hourly rate to \$125.00. Accordingly,

the district director awarded counsel a fee of \$1,593.75, representing 12.75 hours of services at \$125.00 per hour.

On appeal, counsel challenges the reduction in the hourly rate approved by the district director. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance.

The award of an attorney's fee 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) and implemented by 20 C.F.R. §725.367(a), is discretionary and will be upheld on appeal unless shown by the challenging party to be arbitrary, capricious, or an abuse of discretion. *Abbott v. Director, OWCP*, 13 BLR 1-15 (1989), citing *Marcum v. Director, OWCP*, 2 BLR 1-894 (1980).

Counsel asserts that his customary hourly rate is \$250.00 as an experienced attorney in black lung cases, and that he is routinely awarded fees at the rate of between \$200.00 and \$250.00 per hour for work performed before the district director, the Office of Administrative Law Judges and the Benefits Review Board. Counsel thus argues that the reduction of his hourly rate to \$125.00 was unreasonable, and that his fee should be increased. Counsel's arguments are without merit.

The regulations provide for the payment of attorney fees which are reasonably commensurate with the necessary work done, taking into account the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to which the claim was raised, the level at which the representative entered the proceedings, and any other relevant information. 20 C.F.R. §725.366(b). The district director properly evaluated counsel's fee application in light of these factors, and concluded that "the work was performed in a routine case which did not call for special ability" and that "the approved rate was comparable to that being charged by other highly qualified attorneys within the same geographical location who also have considerable expertise in the handling of Federal Black Lung claims." Supplemental Decision and Order at 2. Because the award of a particular hourly rate in one case is based on the unique facts and circumstances of that case, the same hourly rate is not binding in other unrelated cases. *See generally Whitaker v. Director, OWCP*, 9 BLR 1-216 (1986). As we can discern no abuse of discretion in the district director's determination that an hourly rate of \$125.00 was reasonable in terms of the criteria contained in 20 C.F.R. §725.366(b), we affirm his award of attorney fees in the amount of \$1,593.75 for 12.75 hours of services rendered. *Abbott*, 13 BLR 1-15; *Pritt v. Director, OWCP*, 9 BLR 1-159 (1986); *Gillman v. Director, OWCP*, 9 BLR 1-7 (1986).

Accordingly, the district director's Supplemental Decision and Order awarding attorney fees is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge