BRB No. 19-0001 BLA

EDWARD M. LANNON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CHEVRON MINING, INCORPORATED,	)	
SELF-INSURED THROUGH CHEVRON,	)	
c/o BROADSPIRE/CRAWFORD	)	DATE ISSUED: 10/21/2019
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Attorney Fee Order of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Timothy S. Hale (Hale & Dixon, P.C.), Albuquerque, New Mexico, for employer.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Attorney Fee Order (2013-BLA-05581) of Administrative Law Judge John P. Sellers, III, awarding an attorney's fee in connection with a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the

Act).[1] Claimant's counsel requested an attorney's fee and expenses totaling $6,937.50. The administrative law judge acknowledged employer's response that it was reserving its right to respond to the fee petition pending the Board's decision on the merits of employer's appeal of the underlying award of benefits. He found, however, that employer "has not shown any compelling reason to delay a ruling on Counsel's Fee Petition" and did not file any other objections to the fee petition. The administrative law judge awarded a reduced fee and costs of $6,604.58.[2]

On appeal, employer contends the administrative law judge's award of an attorney's fee was premature. Claimant's counsel responds in support of the fee award. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The amount of an attorney's fee award is discretionary and will be upheld on appeal unless the challenging party shows it is arbitrary, capricious, based on an abuse of discretion, or not in accordance with law. *Abbott v. Director, OWCP*, 13 BLR 1-15 (1989).

Employer's sole contention is that the administrative law judge erred in addressing counsel's fee petition when employer's appeal of the underlying benefits award was pending before the Board. Employer's Brief at 2. After employer filed its appeal brief regarding the underlying benefits award on December 21, 2018, the Board affirmed the award of benefits in a Decision and Order issued on January 23, 2019. *See* n.1*, supra*. Thus, employer's contention is moot.

Moreover, an attorney's fee may be approved pending a final award of benefits. The fee award is not enforceable until the claim has been successfully prosecuted and all appeals are exhausted. *See* 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); *Wells v. Int'l Great Lakes Shipping Co*., 693 F.2d 663, 665 (7th Cir. 1982); *Obadiaru v. ITT Corp.*, 45 BRBS 17 (2011); *Goodloe v. Peabody Coal Co*., 19 BLR 1-91, 1-100 n.9 (1995). In the interest of judicial efficiency, it was reasonable for the administrative law judge to render his decision on claimant's counsel's fee petition, subject to final adjudication of the claim. *See Temple v. Big Horn Coal Co.*, 7 BLR 1-573, 1-576

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[1] *See Lannon v. Chevron Mining, Inc.,* BRB No. 18-0110 BLA (Jan. 23, 2019) (unpub.) (affirming the Decision and Order Awarding Benefits and the Order Denying Motion for Reconsideration).

[2] The administrative law judge found the request for an hourly rate of $425 for Joseph E. Wolfe was excessive, and instead awarded a rate of $350 for his services. The administrative law judge awarded the amounts claimed for the services of additional attorneys, legal assistants, and costs as requested in the fee petition.

(1984). As employer does not otherwise challenge the administrative law judge's fee award, we affirm it.

Accordingly, the administrative law judge's Attorney Fee Order is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge