BRB No. 00-1169 BLA

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

Appeal of the Decision and Order on Remand of Gerald M. Tierney, Administrative Law Judge, United States Department of Labor.

Laura A. Woodruff (Maynard, Cooper & Gale, P.C.), Birmingham, Alabama, for employer.

Michael E. Bevers (Nakamura, Quinn & Walls, LLP), Birmingham, Alabama, for claimant.

Jeffrey S. Goldberg (Howard M. Radzely, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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: SMITH, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand (97-BLA-0680) of

Administrative Law Judge Gerald M. Tierney awarding benefits on a duplicate claim[1] 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).[2] This case is before the Board for the second time. In the original Decision and Order, the administrative law judge credited claimant with thirty-three years of coal mine employment and adjudicated this duplicate claim pursuant to the regulations contained in 20 C.F.R. Part 718.[3] Although the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3) (2000), the administrative law

[1]Claimant's initial claim was filed on January 19, 1979. Director's Exhibit 28. Although the district director administratively awarded benefits on July 24, 1980, Administrative Law Judge Quentin P. McColgin subsequently issued a Decision and Order denying benefits on November 6, 1984, *id*., which the Board affirmed, *Handley v. Alabama By-Products Corp.*, BRB No. 84-2683 BLA (Sept. 30, 1986)(unpub.). Judge McColgin's denial was based on claimant's failure to establish the existence of pneumoconiosis and total disability. Director's Exhibit 28. Claimant's most recent claim was filed on April 15, 1996. Director's Exhibit 1.

[2]Employer does not appeal the November 9, 2000 Supplemental Decision and Order Granting Attorney Fees or the December 1, 2000 Supplemental Decision and Order Granting Attorney Fees.

[3]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court's decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) (2000) and 718.203(b) (2000). Further, although the administrative law judge found the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(3), the administrative law judge found the evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(4) (2000).[4] In addition, the administrative law judge found the evidence sufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). Accordingly, the administrative law judge awarded benefits.

[4]The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now found at 20 C.F.R. §718.204(b) while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

In response to employer's appeal, the Board affirmed the administrative law judge's length of coal mine employment finding and his findings at 20 C.F.R. §718.202(a)(1)-(4) (2000), 718.203(b) (2000) and 718.204(c)(1)-(3) (2000). However, the Board vacated the administrative law judge's finding at 20 C.F.R. §718.204(c)(4) (2000), and remanded the case for further consideration of the evidence. The Board instructed the administrative law judge that if reached, he must weigh like and unlike evidence and determine whether claimant established a total respiratory disability at 20 C.F.R. §718.204(c) (2000) by the totality of the evidence in accordance with *Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27 (1991), *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*), *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987), and *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*). The Board also vacated the administrative law judge's finding at 20 C.F.R. §718.204(b) (2000), and remanded the case for further consideration thereunder, if reached. Lastly, the Board instructed the administrative law judge to consider whether the evidence is sufficient to establish a material change in conditions at 20 C.F.R. §725.309 (2000).[5] *Handley v. Drummond Co., Inc.*, BRB No. 98-1588 BLA (Jan. 28, 2000)(unpub.). On remand, the administrative law judge found the evidence sufficient to establish a material change in conditions at 20 C.F.R. §725.309 (2000). The administrative law judge also found the evidence sufficient to establish total disability by medical opinion evidence at 20 C.F.R. §718.204(c)(4) and total disability overall at 20 C.F.R. §718.204(c) (2000) in accordance with *Budash*. Further, the administrative law judge found the evidence sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b) (2000). Accordingly, the administrative law judge again awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the evidence is sufficient to establish a material change in conditions at 20 C.F.R. §725.309 (2000). Employer also challenges the administrative law judge's finding that the evidence is sufficient to establish total disability at 718.204(c)(4) (2000). Lastly, employer challenges the administrative law judge's finding that the evidence is sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b) (2000). Claimant responds to employer's appeal, urging affirmance of the administrative law judge's Decision and Order on Remand. The Director, Office of Workers' Compensation Programs (the Director), has declined to respond to employer's appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be

[5]The revisions to the regulations at 20 C.F.R. §725.309 apply only to claims filed after January 19, 2001.

disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, we address employer's contention that the administrative law judge erred in finding the evidence sufficient to establish a material change in conditions at 20 C.F.R. §725.309 (2000). Specifically, employer asserts that the evidence actually demonstrates that claimant's physical condition did not deteriorate from a pulmonary standpoint. The instant case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit, which has not declared a legal standard to apply in determining if a claimant has established a material change in conditions. The Board has held, in cases arising in circuits where the United States Court of Appeals has not addressed the standard applicable under Section 725.309 (2000), that it adopts the Director's position that in order to establish a material change in conditions, claimant must establish, by a preponderance of the evidence developed subsequent to the denial of the prior claim, at least one of the elements of entitlement previously adjudicated against him. *See Allen v. Mead Corp.*, 22 BLR 1-61 (2000).

In the instant case, the first claim was denied because claimant failed to establish the existence of pneumoconiosis and total disability.[6] Director's Exhibit 28. However, in the duplicate claim, the administrative law judge issued a Decision and Order finding that claimant established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) (2000). As previously noted, the Board affirmed the administrative law judge's finding at 20 C.F.R. §718.202(a)(4) (2000). *See Handley v. Drummond Co., Inc.*, BRB No. 98-1588 BLA, slip op. at 4 (Jan. 28, 2000)(unpub.). The Board's prior disposition of this issue constitutes the law of the case, as employer has advanced no new argument in support of altering the Board's previous holding and no intervening case law has contradicted the Board's resolution of this issue. *See Coleman v. Ramey Coal Co.*, 18 BLR 1-9 (1993). Thus, inasmuch as claimant established the existence of pneumoconiosis, *see* 20 C.F.R. §718.202(a)(4), we hold as a matter of law that the evidence is sufficient to establish a material change in conditions at 20 C.F.R. §725.309 (2000). *See Allen, supra*.

[6]The administrative law judge stated that "[c]laimant's previous claim was denied because he failed to establish invocation of the interim presumption at §727.203(a)." Decision and Order on Remand at 1-2.

Next, we address employer's contentions with regard to the merits of this case. Employer contends that the administrative law judge erred in finding the evidence sufficient to establish total disability at 20 C.F.R. §718.204(c)(4) (2000). The record contains the relevant opinions of Drs. Branscomb, Clemmons, Givhan, Hamilton, Hasson, and Pappas. Director's Exhibits 8, 9, 28; Claimant's Exhibit 1; Employer's Exhibit 1. The administrative law judge observed that "[a]side from Dr. Pappas'[s] opinion, the report of Dr. Hasson supports a finding of total disability."[7] Decision and Order on Remand at 3. In a report dated February 12, 1998, Dr. Pappas opined that claimant suffers from a disabling respiratory impairment.[8] Claimant's Exhibit 1. Similarly, in a report dated May 16, 1996, Dr. Hasson opined that claimant suffers from a mild impairment. Director's Exhibit 9. The administrative law judge stated that the position of "[v]entilation man is [c]laimant's usual coal mine job." Decision and Order on Remand at 3 n.1. The administrative law judge also stated, "[c]onsidering the heavy work required of [c]laimant's usual coal mine job as a ventilation man, I find that it can be inferred that a 'mild' impairment would be totally disabling to [c]laimant." *Id*. at 4. Consequently, the administrative law judge stated, "[r]elying on the opinions of Drs. Pappas and Hasson, I find that [c]laimant has established, by the preponderance of physician opinion evidence, total respiratory disability at §718.204(c)(4)." *Id*.

Employer asserts that the administrative law judge erred in mechanically according greater weight to the opinion of Dr. Pappas than to the contrary opinions of record, based on Dr. Pappas's status as claimant's treating physician. Contrary to employer's assertion, the administrative law judge, within his discretion, provided a

[7]Dr. Branscomb opined that he was unable to determine whether claimant has any pulmonary impairment. Employer's Exhibit 1. In a report dated January 28, 1980, Dr. Givhan noted that claimant was presently working. Director's Exhibit 28. In reports dated July 31, 1979 and February 9, 1984, Dr. Hamilton opined that claimant does not suffer from a disabling respiratory impairment. *Id*. In a report dated February 5, 1980, Dr. Clemmons opined that claimant is disabled from a lung standpoint. *Id*. In weighing the conflicting evidence with regard to the issue of total disability, the administrative law judge did not consider Dr. Clemmons's opinion. Nonetheless, since Dr. Clemmons's opinion supports the administrative law judge's finding of total disability, which we affirm, *infra*, we hold that any error by the administrative law judge in this regard is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[8]In a report dated November 21, 1995, Dr. Pappas diagnosed coal workers' pneumoconiosis as manifested by a chest x-ray, history and pulmonary function studies. Director's Exhibit 8. Dr. Pappas indicated that claimant's condition should be treated with bronchodilators and oxygen when and if needed. *Id*.

reasoned basis which indicates that he reflected on why he found that the treating physician's opinion should be accorded greater weight than some of the other medical opinions of record. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989). The administrative law judge indicated that Dr. Pappas's treatment of claimant provided Dr. Pappas with a better perspective of claimant's pulmonary condition. The administrative law judge stated that "Dr. Pappas...[is] a [B]oard-certified pulmonary specialist." Decision and Order on Remand at 4. The administrative law judge also stated that "as [c]laimant's treating pulmonary physician, Dr. Pappas had the opportunity to observe [c]laimant's condition and capabilities and consider the exertional requirements of his usual coal mine job." *Id*. at 3 n.2. Thus, based on the administrative law judge's consideration of Dr. Pappas's opinion, we reject employer's assertion that the administrative law judge erred in mechanically according greater weight to the opinion of Dr. Pappas than to the contrary opinions of record based on Dr. Pappas's status as claimant's treating physician.

Employer further asserts that Dr. Pappas's opinion does not establish a disabling respiratory or pulmonary impairment. In the February 12, 1998 report, Dr. Pappas responded "Yes" to the question, "Does coal workers' pneumoconiosis cause [claimant] a significant degree of respiratory impairment?" Claimant's Exhibit 1. Dr. Pappas further stated, "[i]t is also my opinion, to a reasonable degree of medical certainty, that [claimant] can no longer perform his last job in the mines, or comparable gainful employment." *Id*. Dr. Pappas also stated that "[t]his is due at least in part to his disabling respiratory impairment." *Id*. In addition, Dr. Pappas stated that "[t]hese jobs as described by the Department of Labor require a level of physical exertion [claimant] no longer can sustain for any length of time."[9] *Id*.

[9]The administrative law judge stated that "Dr. Pappas'[s] simple and direct 'yes' answered affirmatively that [c]laimant suffers from a significant degree of respiratory impairment." Decision and Order on Remand at 2. The administrative law judge also observed that "Dr. Pappas immediately added that [c]laimant can no longer perform his last job in the mines or comparable gainful employment." *Id*. The administrative law judge therefore concluded that because "[i]t can reasonably be inferred that Dr. Pappas is referring

to [c]laimant's significant degree of respiratory impairment as preventing him from performing his last coal mine job[,]...[t]his suffices as a finding of total disability." *Id*. at 2-3.

The administrative law judge stated that although "Dr. Pappas'[s] next sentence '[t]his is due in part' causes pause as it indicates that [c]laimant's respiratory impairment is only part of his overall disability...[,] I do not automatically assume, however, that Dr. Pappas intended to convey that [c]laimant's respiratory impairment alone is not totally disabling or that he is retreating from his prior statements." Decision and Order on Remand at 3. Rather, the administrative law judge stated, "I find it telling that in the same sentence with the 'due at least in part language,' Dr. Pappas continued to identify [c]laimant's respiratory impairment as 'disabling.'" *Id*. The administrative law judge observed that "[t]his maintains the consistency of his opinion...[and] provides a basis upon which it can reasonably be inferred that in addition to other disabling conditions, Dr. Pappas continued to consider [c]laimant's respiratory impairment alone to be disabling." *Id*. The administrative law judge therefore concluded, "I find the ambiguity present in Dr. Pappas'[s] opinion resolved by considering his opinion in context." *Id*. at 2. Thus, inasmuch as the administrative law judge drew a permissible inference from the opinion of Dr. Pappas that claimant suffers from a totally disabling respiratory impairment, *see* Decision and Order on Remand at 2-3; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986), we reject employer's assertion that Dr. Pappas's opinion does not establish a disabling respiratory or pulmonary impairment.[10] Further, inasmuch as it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence is sufficient to establish total disability. *See* 20 C.F.R. §718.204(b)(2)(iv).

In addition, employer contends that the administrative law judge erred in finding the evidence sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(b) (2000). The record contains the relevant opinions of Drs. Branscomb, Hamilton, Hasson and Pappas. The administrative law judge stated, "[r]elying on the opinions of Drs. Pappas and Hasson, I find that [c]laimant has established, by the preponderance of the evidence, that pneumoconiosis is a substantial contributing cause of his total pulmonary disability." Decision and Order on Remand at 5. Citing *Lollar v. Alabama By-Products Corp.*, 893 F.2d 1258, 13 BLR 2-277 (11th Cir. 1990), and *Black Diamond Coal Mining Co. v. Director, OWCP* [*Marcum*], 95 F.3d 1079, 20 BLR 2-325 (11th Cir. 1996), employer specifically asserts that the opinions of Drs. Hasson and Pappas do not satisfy the legal standard for establishing disability causation.

[10]Since the administrative law judge relied on the opinion of Dr. Pappas in support of a finding of total disability, by inference, he found Dr. Pappas's opinion sufficiently reasoned. *See Pulliam v. Drummond Coal Co.*, 7 BLR 1-846 (1985); *Adamson v. Director, OWCP*, 7 BLR 1-229 (1984). We reject employer's assertion that Dr. Pappas's opinion is not reasoned as Dr. Pappas explained that his conclusions were based on coal mine employment and smoking histories, x-ray readings, objective tests, and his examination and treatment of claimant. Claimant's Exhibit 1.

In *Lollar*, the Eleventh Circuit held that in order to qualify for benefits under 20 C.F.R. §718.204 (2000), a claimant must establish that his pneumoconiosis was a substantial contributing factor in the causation of his total pulmonary disability. Further, in *Marcum*, the Eleventh Circuit clarified its holding in *Lollar* with regard to the substantial contributing cause standard by explaining that "[a] conclusion that a contributing cause played more than an infinitesimal or *de minimis* part does not mean that the contributing cause was substantial." *Marcum*, 95 F.3d at 1083, 20 BLR at 2-333. In addition, the revised regulation at 20 C.F.R. §718.204(c) provides that:

> A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in §718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:
>
> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
>
> (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1).

In the instant case, Dr, Hasson opined that claimant suffers from a mild impairment related to pneumoconiosis and bronchitis. Director's Exhibit 9. As previously noted, Dr. Pappas responded "Yes" to the question, "Does coal workers' pneumoconiosis cause [claimant] a significant degree of respiratory impairment?" Claimant's Exhibit 1. The administrative law judge stated that "[w]hile Dr. Pappas'[s] answer to a previous question included [c]laimant's distant smoking history and possible asthmatic component as...factors in his chronic respiratory condition, Dr. Pappas['s] second answer indicates that he considered [c]laimant's coal workers' pneumoconiosis alone sufficient to result in a significant degree of impairment that in fact is totally disabling." Decision and Order on Remand at 5. The administrative law judge rationally found that "[a]s the degree of impairment resulting from pneumoconiosis found by both Drs. Pappas and Hasson rises to the level of being totally disabling, it can reasonably be inferred that pneumoconiosis is a substantial contributing cause of [c]laimant's total pulmonary disability." *Id*.; *see Marcum, supra*; *Lollar, supra*. The administrative law judge also rationally found that "[i]t [can] reasonably be inferred that the pneumoconiosis is playing far more than a mere infinitesimal or *de minimis* part as cautioned by *Marcum, supra*." *Id*. Thus, we reject employer's assertion that the opinions of Drs. Hasson and Pappas do not satisfy the substantially contributing cause standard for establishing disability causation in *Marcum* and *Lollar*.

Moreover, inasmuch as disability causation is also established pursuant to the revised regulation at 20 C.F.R. §718.204(c) by proving that pneumoconiosis is a substantially contributing cause of the miner's disability, we affirm the administrative law judge's finding that the evidence is sufficient to establish total disability due to pneumoconiosis. *See* 20 C.F.R. §718.204(c).

Finally, we address employer's contentions with regard to the request for attorney's fees by claimant's counsel for work performed before the Board. Claimant's counsel has filed a complete, itemized statement requesting a fee for services performed in BRB No. 98-1588 BLA pursuant to 20 C.F.R. §802.203. Claimant's counsel requests a fee of $3,520.00 for 22 hours of legal services rendered before the Board from August 20, 1998 to February 4, 2000 at an hourly rate of $160.00. Employer has filed a response to the fee petition with the Board. Claimant's counsel responds, urging the Board to grant his request for attorney's fees.

Employer asserts that claimant's counsel is not entitled to recover an attorney's fee because the award of benefits is not yet final. An attorney's fee award may be approved pending a final award of benefits, but that fee award is neither enforceable nor payable until the award of benefits becomes final and that award reflects a successful prosecution of the claim. *See* 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); *Wells v. International Great Lakes Shipping Co.*, 693 F.2d 663, 15 BRBS 47 (CRT) (7th Cir. 1982); *Spinner v. Safeway Stores, Inc.*, 18 BRBS 155 (1986). Thus, contrary to employer's assertion, the Board may award attorney's fees, but this award cannot be enforced until there has been a final successful prosecution of the claim. *See Wells, supra; Spinner, supra.*

Employer next asserts that claimant's counsel is requesting compensation for an unreasonable number of hours for legal services. Specifically, employer asserts that the Board should disallow 3.5 hours of legal services which claimant's counsel requested for work performed from December 3, 1998 to February 5, 1999. Employer argues that claimant's counsel was not handling the miner's claim, but was performing work in the survivor's claim for claimant's widow during this time. An attorney's fee may be approved for services which are necessary to establish entitlement to benefits. 20 C.F.R. §725.366(b). Inasmuch as the activities performed by claimant's counsel from December 3, 1998 to February 5, 1999 were performed while the miner's claim was pending before the Board, we find that these services were reasonable and necessary for establishing entitlement to benefits in this case. *See Lanning v. Director, OWCP*, 7 BLR 1-314 (1984). Therefore, we reject employer's assertion that the Board should disallow the hours of legal services that claimant's counsel requested during this time period.

Employer additionally asserts that the 13.5 hours expended by claimant's counsel in preparing a brief to the Board is excessive and unreasonable. Contrary to employer's

assertion, the expenditure of time by claimant's counsel for preparing a brief was reasonable in light of the nature of the pleadings and issues raised on appeal in BRB No. 98-1588 BLA. Thus, we reject employer's assertion that the number of hours expended by claimant's counsel for preparing a brief to the Board is excessive and unreasonable. *See Goodloe v. Peabody Coal Co.*, 19 BLR 1-91 (1995). Inasmuch as employer's objections to the petition for attorney's fees by claimant's counsel are without merit, the Board awards a fee of $3,520.00 for 22 hours of legal services at an hourly rate of $160.00, to be paid directly to claimant's counsel by employer, in addition to any benefits payable to claimant. 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §802.203.[11]

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed, and claimant's counsel is awarded a fee of $3,520.00.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY

[11]This fee becomes enforceable upon claimant's ultimate success in the prosecution of the instant claim.

Administrative Appeals Judge