

BRB No. 06-0850 BLA

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| ISABELL TAYLOR |) | |
| (Widow of JOHN L. TAYLOR) |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| RAG AMERICAN COAL COMPANY |) | |
| |) | |
| and |) | |
| |) | |
| EMPLOYERS SERVICE COMPANY |) | DATE ISSUED: 09/25/2007 |
| |) | |
| Employer/Carrier- |) | |
| Petitioners |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | DECISION and ORDER |

Appeal of the Decision and Order – Approving Attorney Fees of Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson (Johnson, Jones, Snelling, Gilbert & Davis, P.C.), Chicago, Illinois, for claimant.

W. William Prochot (Greenberg Traurig, LLP), Washington, D.C., for employer and carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Approving Attorney Fees (1999-BLA-1299) of Administrative Law Judge Rudolf L. Jansen on a survivor’s 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, Thomas E. Johnson and Anne Megan Davis, submitted a fee petition to the administrative law judge for work performed between March 2, 2000 and November 11, 2003, requesting a fee of \$42,707.10 for 170.74 hours of legal services at the rate of \$215.00 per hour, and 59.98 hours of paralegal services at the rate of \$100.00 per hour, plus an additional \$2,926.32 in expenses. After considering employer's objections and counsel's response thereto, the administrative law judge approved the hourly rates and allowed all of the hours requested, as well as the full amount of the expenses requested. The administrative law judge also approved counsel's subsequent request for a fee of \$1,311.50, representing 6.10 hours at the rate of \$215.00 per hour for legal work performed in responding to employer's opposition to counsel's fee petition, as employer did not object thereto. Accordingly, the administrative law judge approved a total payment of \$46,944.92 in attorney fees and expenses. On appeal, employer challenges the number of hours awarded as excessive. Claimant's counsel responds, urging affirmance of the administrative law judge's fee award, and requests an additional fee for work performed in response to this appeal. Employer objects to counsel's fee request to the Board as premature, excessive, and inappropriately raised in a response brief. The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

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 applicable law. *Abbott v. Director, OWCP*, 13 BLR 1-15 (1989), citing *Marcum v. Director, OWCP*, 2 BLR 1-894 (1980).

Employer contends that the administrative law judge erred in requiring employer to challenge specific time entries rather than groupings of hours for specific tasks, such as briefing and summarizing evidence. Employer maintains that it met its burden of stating objections to the fee petition with particularity and clarity, and argues that the administrative law judge improperly shifted the burden to employer to establish what constituted a reasonable number of hours to litigate the case, rather than requiring claimant's counsel to justify spending eighty-seven hours in writing a post-hearing brief and another forty hours in drafting a remand brief. Employer asserts that, in response to employer's suggestion that the time charged was inflated in view of counsel's hourly rate, and that \$2,500.00 constituted a reasonable charge for preparing each brief, the administrative law judge incorrectly believed that he could not cut the briefing charges by a lump sum. Employer also contends that the administrative law judge erred in permitting redundant fees for multiple legal professionals, and maintains that there is no factual support for the administrative law judge's finding that the time charges were reasonable in light of the routine nature of the case. Employer further asserts that the paralegal's services should have reduced the briefing charges, and that counsel's briefing before the Board should have led to lower costs on remand. Employer's arguments are without merit.

The administrative law judge properly addressed all of employer's objections to the fee petition, considered the regulatory criteria at 20 C.F.R. §725.366, and acted within his discretion in finding that the overall fee for legal and paralegal services was reasonable for the work performed; that the hours counsel claimed for the paralegal and counsel were not excessive; and that the services performed could reasonably be regarded as necessary to establish entitlement. *See generally Lanning v. Director, OWCP*, 7 BLR 1-314 (1984); *Busbin v. Director, OWCP*, 3 BLR 1-374 (1981). The administrative law judge permissibly rejected employer's argument that this was a routine case, noting that the record, containing twelve medical expert reports and multiple depositions, was voluminous and "full of difficult technical medical data that required considerable time to properly and completely evaluate," Decision and Order 4; that employer offered the opinions of seven expert witnesses together with numerous arguments related to their medical reports and deposition testimony; and that it was necessary for counsel to address all contentions raised in employer's vigorous opposition to claimant's entitlement. Decision and Order at 3-4. While the administrative law judge observed that employer raised no specific objections to the individual entries and offered no basis for its suggestions as to the amount of time that was reasonable and necessary to complete various tasks and the appropriate overall charges for those services, we find no support for employer's arguments that the administrative law judge imposed an improper burden on employer and believed he lacked authority to reduce the fees charged by a lump sum. Rather, the administrative law judge was not persuaded by employer's assertions regarding the amount of time it should have taken for the paralegal to organize and summarize the evidence and for counsel to complete the 44-page post-hearing brief and the 32-page brief on remand, or the appropriate compensation for these services. The administrative law judge permissibly concluded that both the hourly rate and the hours charged were "entirely reasonable" in light of the extensive evidence to be reviewed and discussed, the multiple arguments to be addressed, and the caliber of the work performed. Decision and Order at 2-3. The administrative law judge also acted within his discretion in rejecting employer's unsupported argument that the use of two attorneys and a paralegal created duplicative and redundant billing charges and hindered efficiency in litigating the case. Decision and Order at 4. As employer has demonstrated no abuse of discretion, we affirm the administrative law judge's award of \$46,944.92 in attorney fees and expenses. *Abbott*, 13 BLR at 1-16.

Lastly, claimant's counsel has requested an additional fee of \$2,526.25 for 11.75 hours at the rate of \$215.00 per hour for legal work performed before the Board in responding to employer's arguments in the instant appeal. We reject employer's objection that counsel's fee request was premature, and accept the fee petition made by way of an itemized affidavit attached to counsel's response brief. Employer also objects to the fee request as excessive, arguing that it should have taken, at most, three hours to prepare an adequate response, given counsel's familiarity with the issues and his experience. After considering employer's objections, the Board finds the requested fee to

be reasonable in light of the services performed, and hereby approves a fee of \$2,526.25, to be paid directly to claimant's counsel by employer. 33 U.S.C. §928; 20 C.F.R. §802.203.

Accordingly, the administrative law judge's Decision and Order – Approving Attorney Fees is affirmed. Counsel's petition for fees generated in response to the instant appeal before the Board is approved in the amount of \$2,526.25.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge