

BRB Nos. 88-3882 BLA

JOSEPH A. ALFANO )  
 )  
 Claimant-Respondent )  
 )  
 v. )

)  
 DIRECTOR, OFFICE OF WORKERS' ) Date Issued:  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Petitioner ) DECISION and ORDER

Appeal of the Supplemental Decision and Order Approving Attorney's Fees of Robert J. Feldman, Administrative Law Judge, United States Department of Labor.

Rita Roppolo (Thomas S. Williamson, Jr., 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: DOLDER, Acting Chief Administrative Appeals Judge, SMITH and BROWN, Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals the Supplemental Decision and Order Approving Attorney's Fees (83-BLA-6824) of Administrative Law Judge Robert J. Feldman approving attorney's fees 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 attorney submitted an attorney's fee petition on June 23, 1987 requesting a fee in the amount of \$1,600 for twenty hours of work at a rate of \$80 per hour. Upon considering this petition, the administrative law judge found that no objection had been filed to the petition and that the fee is reasonably commensurate with the

necessary work done on behalf of claimant before the Office of Administrative Law Judges. Accordingly, the fee petition was approved. Subsequent to the issuance of the administrative law judge's supplemental Decision and Order, the Director filed a motion for reconsideration which the administrative law judge denied. On appeal, the Director contends that the administrative law judge's award of attorney's fees is in error as the amount

awarded includes fees for work that was performed prior to the case being referred to the Office of Administrative Law Judges. Claimant's attorney has not responded to this appeal.

An award of attorney's fees is discretionary and will be upheld unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Marcum v. Director, OWCP*, 2 BLR 1-894 (1980).

The Director contends that the administrative law judge erred in awarding fees for four and one-half hours of work performed between January 7, 1980 and April 8, 1983, as the case was pending before the district director at that time. The Director's contentions have merit as the claim was not referred to the Office of Administrative Law Judges until August 26, 1983. See Director's Exhibit 25. The Board has held that all fee petitions must be filed with and approved by the adjudicating officer or tribunal before whom the services were performed. See *Abbott v. Director, OWCP*, 13 BLR 1-15 (1989). As a result, we hereby reduce the administrative law judge's fee award by \$360, representing four and one-half hours of service provided between January 7, 1980 and April 8, 1983, at an hourly rate of \$80. Accordingly, the administrative law judge's attorney fee award is modified to \$1,240.

Accordingly, the administrative law judge's Supplemental Decision and Order Approving Attorney's Fees is modified in accordance with this opinion.

SO ORDERED.

NANCY S. DOLDER, Acting Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge