BRB No. 91-131

JOHNNIE L. PULLIN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING, INCORPORATED	)	
	)	
	)	DATE ISSUED:_____
Self-Insured Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER ON RECONSIDERATION

Claimant has timely filed a Motion for Reconsideration of the Board's Order on Reconsideration in this case. *Pullin v. Ingalls Shipbuilding, Inc.*, 27 BRBS 45 (1993); 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. In *Pullin*, which concerned the assessment of a Section 14(e), 33 U.S.C. §914(e), penalty, the Board awarded claimant's counsel an attorney's fee of $315, for successfully prosecuting his appeal, representing 2.5 hours for services performed before the Board at a rate of $125 per hour plus $7.50 in costs. *Pullin*, 27 BRBS at 47; *see* 33 U.S.C. §928. In awarding the fee, the Board denied one hour claimed on November 7, 1990 for review of employer's appeal. Noting that employer had not filed an appeal, the Board found the work was "not reasonably necessary in this case." *Id.* Claimant requests that the Board reconsider its denial of the one hour claimed for services rendered on November 7, 1990. Employer responds, urging affirmance.

With claimant's motion for reconsideration, counsel submitted an amended fee application, correcting and explaining the November 7, 1990 entry. Counsel states that her original fee petition erroneously described that work as the receipt and review of employer's appeal. Instead, she states that the item should have been identified as the receipt and review of the Board's acknowledgement of claimant's appeal. Counsel concedes the work was not actually performed on November 7, 1990, as that is the date the Board issued the acknowledgement, but she states that "for simplicity" charges for receiving and reviewing correspondence are identified by the date appearing thereon, although actual review of the correspondence may occur on a subsequent date. Amended Fee Petition at 4. Counsel also admits that the billing method does not depict that "a lawyer was actually engaged in the particular activity enumerated" in the petition. *Id.* at 3. However, she argues that the hour

claimed represents a "fair and reasonable charge for the *task* performed" in a joint effort among the attorney, paralegal and support staff. *Id.* (emphasis in original). Such "unit" or "increment" billing, she argues, represents all services associated with the identified task.

Counsel is entitled to a fee reasonably commensurate with the necessary work performed before the Board. *Canty v. S.E.L. Maduro*, 26 BRBS 147, 158 (1992); *Mikell v. Savannah Shipyard Co.*, 24 BRBS 100 (1990), *aff'd on recon.*, 26 BRBS 32 (1992); 20 C.F.R. §802.203(e). Further, Section 802.203(d) of the regulations provides that a complete fee application must contain a statement of the extent and character of the necessary work done, the professional status and billing rate of each person performing said work, the number of hours, in quarter-hour increments, devoted by each person to the work, and the date on which the work was performed. 20 C.F.R. §802.203(d). Given counsel's admission that the practice of "unit" or "increment" billing is not related to actual work done on a particular date, or to the performance or talents of a specified person, it is clear that such a billing method does not satisfy the provisions of the regulation. 20 C.F.R. §802.203(d)(1)-(3). The regulation is unambiguous as to the requirements of a complete fee petition, and use of the quarter-hour increment billing method alone cannot support approval of items charged using the "unit" billing practice. Furthermore, the "unit" billing practice makes it impossible for the Board to discern if counsel is billing for traditional clerical work, which is not separately compensable. *See Quintana v. Crescent Wharf & Warehouse Co.*, 18 BRBS 254 (1986); *Morris v. California Stevedore & Ballast Co.*, 10 BRBS 375 (1979). The Board, therefore, will not award a fee for time charged using "unit" billing.

According to counsel, the November 7, 1990 entry in the fee petition before the Board is an example of this "unit" or "increment" billing method. Since we hold that "unit" or "increment" billing is incompatible with the regulations, we further hold that, in this case, employer is not liable for charges incurred on November 7, 1990. Therefore, we reject claimant's request to supplement the Board's original fee award. Claimant's counsel is entitled to a fee of $320, payable directly to counsel by employer, representing 2.5 hours of work at a rate of $125 per hour plus expenses of $7.50 for services performed before the Board.[1]

[1]We note a mathematical error in the Board's previous calculation of counsel's fee. Consequently, we amend the Order to reflect the appropriate computation.

Accordingly, claimant's motion for reconsideration is granted; however, the requested relief is denied. 20 C.F.R. §802.409.

SO ORDERED.

NANCY S. DOLDER, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge