



BRB No. 14-0217 BLA

FREDDIE BLANKENSHIP	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EDD POTTER COAL COMPANY,	)	
INCORPORATED	)	
	)	
and	)	
	)	DATE ISSUED: 01/28/2015
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-	)	
Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

Before: HALL, Acting Chief Administrative Appeals Judge, McGRANERY and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Supplemental Decision and Order (2012-BLA-5376) of Administrative Law Judge Richard T. Stansell-Gamm awarding attorney's

fees with respect to a claim filed pursuant to the provisions the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

Claimant's counsel requested a total fee of \$6,393.75, for 12.25 hours of legal services at an hourly rate of \$300.00 (Joseph E. Wolfe), 0.25 hours of legal services at an hourly rate of \$225.00 (Ryan C. Gilligan), 3.75 hours of legal services at an hourly rate of \$150.00 (Micah S. Blankenship), and 21 hours of legal services at an hourly rate of \$100.00 (legal assistants). Fee Petition at 1. Claimant's counsel also requested \$1,451.56 in litigation expenses.

After considering employer's objections and claimant's counsel's response thereto, the administrative law judge approved the requested hourly rates and all requested expenses, but disallowed compensation for 6.5 hours of legal services provided by the legal assistants (\$650.00) because the work was clerical in nature. Decision and Order at 4. Accordingly, the administrative law judge awarded claimant's counsel a total fee of \$7,195.31 for legal services performed and expenses incurred while the case was before the Office of Administrative Law Judges between January 16, 2012 and January 11, 2014. *Id.* at 7.

On appeal, employer contends that the administrative law judge's attorney's fee award is excessive. Claimant's counsel responds, urging affirmance of the attorney's fee award. The Director, Office of Workers' Compensation Programs, has indicated he will not file a brief. Employer has filed a reply brief in support of its position.<sup>1</sup>

The amount of an attorney's fee award by an administrative law judge 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. *Jones v. Badger Coal Co.*, 21 BLR 1-102, 1-108 (1998) (en banc); *Abbott v. Director, OWCP*, 13 BLR 1-15, 1-16 (1989). An attorney's fee award does not become effective, and is thus unenforceable, until there is a successful prosecution of the claim and the award of benefits becomes final. *Coleman v. Ramey Coal Co.*, 18 BLR 1-9, 1-17 (1995).

### **Hourly Rate**

In determining the amount of an attorney's fee to award under a fee-shifting statute, the United States Supreme Court has held that a court must determine the number of hours reasonably expended in preparing and litigating the case and then multiply those hours by a reasonable hourly rate. This sum constitutes the "lodestar" amount. *Pa. v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986). The lodestar method is

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<sup>1</sup> We affirm, as unchallenged on appeal, the award of \$1,451.56 for litigation expenses. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983)

the appropriate starting point for calculating fee awards under the Act. *B & G Mining, Inc. v. Director, OWCP [Bentley]*, 522 F.3d 657, 663, 24 BLR 2-106, 2-121 (6th Cir. 2008).

An attorney's reasonable hourly rate is "to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). The prevailing market rate is "the rate that lawyers of comparable skill and experience can reasonably expect to command within the venue of the court of record." *Geier v. Sundquist*, 372 F.3d 784, 791 (6th Cir. 2004). The fee applicant has the burden to produce satisfactory evidence "that the requested rates are in line with those prevailing in the community for similar services by lawyers of comparable skill, experience, and reputation." *Blum*, 465 U.S. at 896 n.11; *Gonter v. Hunt Valve Co.*, 510 F.3d 610, 617 (6th Cir. 2007).

Employer challenges the hourly rates awarded by the administrative law judge, contending that the rates are not supported by prevailing market evidence. We disagree. The administrative law judge found that claimant's counsel's fee petition includes citations to forty-one recent cases in which Attorney Wolfe was awarded an hourly rate of at least \$300.00.<sup>2</sup> See Claimant's Counsel's Fee Petition at 3-6. These cases include awards to Messrs. Gilligan and Blankenship at their requested hourly rates of \$225.00 and \$150.00, respectively. These cases also include awards of an hourly rate of \$100.00 for work performed by claimant's counsel's legal assistants. The United States Court of Appeals for the Fourth Circuit has upheld reliance on prior awards, in addition to other sources such as those provided in this case, for guidance in calculating the lodestar amount. See *E. Associated Coal Corp. v. Director, OWCP [Gosnell]*, 724 F.3d 561, 572, 25 BLR 2-359, 2-375-76 (4th Cir. 2013) ("[P]rior fee awards constitute evidence of a prevailing market rate that may be considered in fee-shifting contexts, including those prescribed by [the Act]."); *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 290, 24 BLR 2-269, 2-291 (4th Cir. 2010). For the reasons set forth in *Gosnell*, we reject employer's arguments to the contrary in this case. In awarding the respective hourly rates of \$300.00, \$225.00, and \$150.00 to Attorneys Wolfe, Gilligan and Blankenship, the administrative law judge also relied upon the nature of the case, as well as the attorneys'

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<sup>2</sup> The administrative law judge noted that claimant's counsel also submitted a copy of a page from the 2006 Survey of Law Firm Economics published by Altman & Weil and affidavits from other attorneys to support his assertion that the hourly rates requested were reasonable. Decision and Order at 3. Affidavits from attorneys who are familiar with both the skills of a fee applicant and the type of work involved in federal black lung cases are appropriate to consider in establishing a market rate. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 290, 24 BLR 2-269, 291 (4th Cir. 2010).

knowledge, experience, and quality of work.<sup>3</sup> Decision and Order at 2-3. These factors are relevant to an administrative law judge's determination of the reasonableness of a requested hourly rate. *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 228, 43 BRBS 67, 71 (CRT) (4th Cir. 2009); *Bentley*, 522 F.3d at 664-65, 24 BLR at 2-124.

Based on the administrative law judge's proper analysis of the regulatory criteria, we hold that the administrative law judge did not abuse his discretion in determining that claimant's counsel's requested hourly rates for Mr. Wolfe, Mr. Gilligan, Mr. Blankenship, and the legal assistants were reasonable and reflected the applicable market rates. 20 C.F.R. §725.366(b); *see Bentley*, 522 F.3d at 663-64, 24 BLR at 2-126; *Gosnell*, 724 F.3d at 572, 25 BLR at 375-76; *Bowman v. Bowman Coal Co.*, 24 BLR 1-167 (2010); *Maggard v. Int'l Coal Group, Knott County, LLC*, 24 BLR 1-172 (2010); Decision and Order at 3. We, therefore, affirm the administrative law judge's award of the hourly rates in this case.<sup>4</sup>

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<sup>3</sup> In his fee petition, claimant's counsel noted that attorneys in his law firm "are very experienced" in the area of black lung law. Letter from Mr. Wolfe dated February 15, 2013. Counsel further noted that he knows of "no other firms in Virginia and very few across the nation taking new [black lung] cases." *Id.*

<sup>4</sup> While the case was before the administrative law judge, employer filed a motion to compel discovery, seeking information from claimant's counsel regarding his market rates. In his Decision and Order, the administrative law judge noted that, in support of the requested fees, in addition to a list of forty-one prior fee awards in black lung cases, counsel submitted affidavits from three experienced attorneys familiar with fees charged in black lung cases, and relevant portions of the Altman and Weil survey. Decision and Order at 3. In denying employer's discovery request, the administrative law judge concluded that "employer's counsel had sufficient information upon which to base his objections to the present attorney fee petition." *Id.* at 2. An administrative law judge has broad discretion in procedural matters. *See Consolidation Coal Co. v. Williams*, 453 F.3d 609, 23 BLR 2-345 (4th Cir. 2006). Because employer has not demonstrated prejudicial error or an abuse of discretion in the administrative law judge's denial of its request, the administrative law judge's decision to deny employer's motion to compel discovery is affirmed. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc).

## Allowable Hours

Employer also argues that the administrative law judge erred by compensating claimant's counsel for an unreasonable number of hours for legal services. Employer's Brief at 5. Specifically, employer contends that counsel's practice of billing in quarter-hour increments was unreasonable. We disagree. The United States Court of Appeals for the Fourth Circuit has held that attorneys may bill, and adjudicators may award fees, in quarter-hour increments in black lung cases. *Gosnell*, 724 F.3d at 576; 25 BLR at 2-384. Here, the administrative law judge scrutinized claimant's counsel's fee petition in light of employer's contention that the number of hours requested in the fee petition was excessive and disallowed 6.5 hours of services he deemed to be clerical in nature. Decision and Order at 4-6. Consequently, we hold that the number of hours awarded by the administrative law judge was reasonable and supported by the record.

Accordingly, the administrative law judge's Supplemental Decision and Order awarding attorney's fees, requiring employer to pay claimant's counsel \$5,743.75 for legal services, and \$1,451.56 for litigation expenses, is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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GREG J. BUZZARD  
Administrative Appeals Judge