

BRB No. 13-0393 BLA

EARNEST B. OWENS )  
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 Claimant-Respondent )  
 )  
 v. )  
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 IVY BRANCH COAL COMPANY ) DATE ISSUED: 03/14/2014  
 )  
 Employer-Petitioner )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Supplemental Decision and Order Award of Attorney's Fees of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

John R. Sigmund (Penn, Stuart & Eskridge), Bristol, Virginia, for employer.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Award of Attorney's Fees (2011-BLA-05625) of Administrative Law Judge Daniel F. Solomon, regarding a miner's claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). Claimant's counsel submitted a fee petition to the administrative law judge for legal services, in the amount of \$12,281.25, performed from February 9, 2011 to November 20, 2012, and reimbursement of costs totaling \$2,356.27. After considering employer's objections, counsel's response, and the information presented on the petition, the administrative law judge deducted eight hours of time expended by a legal assistant, and half an hour of time by Attorney Joseph E. Wolfe's

time because he found it was duplicative, or for clerical work. The administrative law judge also reduced the requested hourly rate to \$200 an hour for Attorney Ryan C. Gilligan, \$150 an hour for Attorney Micah Blankenship, and \$75 an hour for the legal assistants.<sup>1</sup> The administrative law judge determined that the rest of the requested fees and costs were reasonable. Accordingly, the administrative law judge awarded claimant's counsel \$10,531.25 in attorneys' fees and \$2,356.27 in costs.

On appeal, employer argues that the administrative law judge's fee award should be vacated and remanded because the administrative law judge did not "consider whether the total amount of time expended by claimant's counsel was reasonable, given that there were numerous instances where counsel billed a full 15 minutes for reviewing brief form documents and drafting brief letters." Employer's Brief at 6. Claimant responds, urging affirmance of the fee award. The Director, Office of Workers' Compensation Programs, has not responded to employer's appeal.

The amount of an award of an attorney fee is discretionary and will be upheld on appeal unless shown by the challenging party to be arbitrary, capricious, or an abuse of discretion. *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).

On appeal, employer specifically identifies eighteen entries where Attorney Wolfe reviewed or drafted letters or documents that employer alleges "could not have reasonably taken any attorney . . . 15 minutes." Employer's Brief at 6. Employer also identifies twenty entries where Attorney Wolfe drafted short letters that "are at most a few paragraphs long, and usually two to three sentences long." *Id.* at 9. Employer contends "that the [administrative law judge] erred as a matter of law by failing to consider whether the total number of hours billed by claimant's counsel was reasonable." *Id.* Therefore, employer requests that the administrative law judge be instructed on remand to determine if the total number of hours billed is reasonable, given "the tasks actually performed." *Id.*

Employer's arguments lack merit. Quarter-hour billing is permissible, as long as the total amount of time is reasonable. *B & G Mining, Inc. v. Director, OWCP [Bentley]*, 522 F.3d 657, 24 BLR 2-106 (6th Cir. 2008). The administrative law judge considered employer's contention that the number of hours requested in the fee petition was excessive and found that "7.5 hours of legal assistant time, for services such as billing

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<sup>1</sup> Claimant's counsel requested fees for: 25.75 hours billed by Attorney Joseph E. Wolfe at a rate of \$300 an hour; .25 hours billed by Attorney Ryan C. Gilligan at a rate of \$225 an hour; 3.5 hours billed by Attorney Micah Blankenship at a rate of \$200 an hour; and 39.75 hours billed by legal assistants at a rate of \$100 an hour.

claimant for out of pocket expenses and taking messages for attorneys, and .5 hours of Joseph Wolfe's time, for [calculating] payments to doctors for exams on chest x-ray readings, are for clerical work." Supplemental Decision and Order at 5. The administrative law judge also determined that ".50 hours of legal assistant time will also be deducted for duplicative work." *Id.* We affirm the deductions of time outlined by the administrative law judge, as they represent a reasonable exercise of his discretion. *See Jones*, 21 BLR at 1-108. We further hold that the administrative law judge permissibly found that "the remaining entries are reasonable and necessary" and, therefore, that claimant's counsel's use of quarter-hour billing was acceptable. Supplemental Decision and Order at 5; *see Bentley*, 552 F.3d at 666-67, 24 BLR at 2-127; *Poole v. Ingalls Shipbuilding, Inc.*, 27 BRBS 230, 237 n.6 (1993). Because employer has raised no other challenge to the administrative law judge's award of attorney fees, it is affirmed.

Accordingly, the administrative law judge's Supplemental Decision and Order Award of Attorney's Fees is affirmed.

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge