

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 19-0287 BLA

HARVEY E. FURROW)	
)	
Claimant-Respondent)	
)	
v.)	
)	
U.S. STEEL MINING COMPANY, LLC)	
)	DATE ISSUED: 04/15/2020
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Proposed Order Supplemental Award - Fee for Legal Services of Kristi Long, Claims Examiner, United States Department of Labor.

Howard G. Salisbury, Jr. (Kay, Casto & Chaney PLLC), Charleston, West Virginia, for employer.

Jeffrey S. Goldberg (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; 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: BOGGS, Chief Administrative Appeals Judge, BUZZARD and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Proposed Order Supplemental Award - Fee for Legal Services of Claims Examiner Kristi Long (the district director), granting an attorney's fee in connection with a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §901-944 (2012) (the Act).

Claimant filed a claim for benefits on January 24, 2007. Director's Exhibit 4. In a Decision and Order on Remand dated July 23, 2012, Administrative Law Judge Robert B. Rae awarded benefits. On March 25, 2015, claimant's counsel submitted a fee petition to the district director requesting a fee of \$1,125.00, representing 3.00 hours of legal services Joseph E. Wolfe performed at an hourly rate of \$300 and 2.25 hours of services legal assistants performed at an hourly rate of \$100. The district director disallowed 1.00 hour of legal assistant services as clerical in nature. Accordingly, the district director ordered employer to pay a total award of \$1,025.00 to claimant's counsel.

On appeal, employer challenges the fee award, asserting that the district director erred in treating the fee petition as timely filed. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds, asserting that the district director's disposition of counsel's fee petition was appropriate and should be affirmed. Employer has filed a reply brief in support of its position.

The amount of an attorney fee award is discretionary and will be upheld on appeal unless the challenging party shows it 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).

Employer argues that the district director erred in accepting the fee petition as timely. It asserts that even though the district director did not set a deadline for filing the petition, a reasonable time limit should be implied and a two year and eight month lapse before filing "has surely exceeded any such reasonable time limit." Employer's Brief at 6. Employer thus urges the Board to recognize an implied deadline and reverse the fee award as untimely. Employer's Brief at 6-7; Reply Brief at 4-5. We disagree.

As the Director correctly notes, neither the Act nor the regulations sets a time period during which fee petitions must be filed with the district director. See 33 U.S.C. §928. The regulations permit the individual district director considering the fee request to set the time limit for filing the petition. See 20 C.F.R. §725.366(a).¹ To the extent that the district director should have addressed employer's argument that the fee petition was untimely,

¹ Section 725.366(a) provides, in pertinent part, that the fee petition be filed "within the time limits allowed by the district director." 20 C.F.R. §725.366(a).

any error is harmless given that the fee petition did not violate any prescribed time limits. *See Bankes v. Director, OWCP*, 765 F.2d 81, 82 (6th Cir. 1985) (“It is within the discretion of the deputy commissioner to set the time limitation for the filing of a fee application for services performed before him in a black lung benefits case.”). Because employer has not demonstrated the district director abused her discretion, we affirm the attorney fee award in the amount of \$1,025.00.²

Accordingly, the district director’s Proposed Order Supplemental Award - Fee for Legal Services is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

² We note that employer has not argued that it was denied due process and an opportunity to contest the fees as a consequence of the amount of time which elapsed before the fee petition was submitted or the delay between the submission of the fee petition and the district director’s order.