



BRB No. 25-0321 BLA

CHARLES E. McDANIEL)
)
 Claimant-Respondent)
)
 v.)
)
 MINGO LOGAN COAL COMPANY)
)
 Employer-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 04/03/2026

DECISION and ORDER

Appeal of the Proposed Order Supplemental Award Fee for Legal Services of Charlina L. Adams, Claims Examiner, United States Department of Labor.

Donna E. Sonner and Joseph E. Wolfe (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Scott A. White (White & Risse), Arnold, Missouri, for Employer.

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Claims Examiner Charlina L. Adams's (the Claims Examiner's) Proposed Order Supplemental Award Fee for Legal Services (Fee Award) rendered on an attorney fee petition filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

In a Proposed Decision and Order (PDO) – Award of Benefits-Responsible Operator dated July 26, 2016, Claims Examiner Ashley N. Gandee found Claimant established a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. Director’s Exhibit 57. Employer requested a hearing and Administrative Law Judge Theresa C. Timlin (the ALJ) issued a Decision and Order Denying Benefits. *McDaniel v. Mingo Logan Coal Co.*, 2017-BLA-05161 (May 30, 2019) (unpub.); Director’s Exhibit 70.

Claimant timely requested modification of the denial and submitted additional evidence. Director’s Exhibit 163. The Claims Examiner denied modification in a November 18, 2019 PDO, Director’s Exhibit 166, and Claimant again requested modification and submitted additional evidence. Director’s Exhibit 174. The Claims Examiner denied Claimant’s second request for modification in a November 9, 2020 PDO. Director’s Exhibit 214. Claimant subsequently requested a hearing, and the claim was again referred to the Office of Administrative Law Judges. Director’s Exhibits 223, 226.

In a December 17, 2024 Decision and Order Awarding Benefits on Modification, the ALJ granted modification and awarded benefits. *McDaniel v. Mingo Logan Coal Co.*, 2021-BLA-06008 (Dec. 17, 2024) (unpub.). The Benefits Review Board affirmed that award. *McDaniel v. Mingo Logan Coal Co.*, BRB No. 25-0133 BLA (Mar. 23, 2026) (unpub.).

On February 12, 2025, Claimant’s counsel (Counsel) filed a complete, itemized fee petition requesting \$8,185.00 for legal services performed before the district director from May 22, 2019, to January 14, 2021. The total fee requested for legal services represents: \$3,850.00 for 11.0 hours of Attorney Joseph E. Wolfe’s services at an hourly rate of \$350.00; \$75.00 for 0.25 hour of Attorney Andrew Delph’s services at an hourly rate of \$300.00; \$1,725.00 for 5.75 hours of Attorney Brad Austin’s services at an hourly rate of \$300.00; \$100.00 for 0.5 hour of Attorney Rachel Wolfe’s services at an hourly rate of \$200.00; \$1,162.50 for 7.75 hours of Attorney Victoria Herman’s services at an hourly rate of \$150.00; \$37.50 for 0.25 hour of Attorney Shane Hobb’s services at an hourly rate of \$150.00 and \$1,235.00 for 12.35 hours of legal assistant time at an hourly rate of \$100.00. Counsel also requested \$2,130.52 for expenses incurred in representing Claimant.

Employer objected to the hourly rates for Attorneys Joseph Wolfe, Brad Austin, and Rachel Wolfe and for the legal assistants, asserting hourly rates of \$300.00 for Joseph Wolfe, \$250.00 for Mr. Austin, \$150.00 for Rachel Wolfe, and \$75.00 for legal assistant services are more appropriate. Employer also objected to Counsel’s billing in quarter-hour increments and to reimbursement for travel expenses incurred by Claimant. Despite Employer’s objections, the Claims Examiner awarded in full Counsel’s requested \$8,185.00 in legal fees and \$2,130.52 in expenses. Fee Award at 4-5.

On appeal, Employer contends the Claims Examiner should have reduced Mr. Wolfe's requested hourly rate because the rates awarded to him in prior cases do not support a market rate of \$350.00 per hour for his services. It further argues the Claims Examiner should have rejected Counsel's use of quarter-hour billing increments and rejected his request for reimbursement of Claimant's mileage costs in traveling to his June 10, 2019 medical evaluation with Dr. Green, whose report Claimant used to support his modification request. Counsel responds in support of the fees and costs awarded. Employer filed a reply brief reiterating its contentions.¹ The Director, Office of Workers' Compensation Programs, has not filed a response.

The amount of an attorney's fee award 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.² See *E. Assoc. Coal Corp. v. Director, OWCP* [Gosnell], 724 F.3d 561, 568-69 (4th Cir. 2013); *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); *Marcum v. Director, OWCP*, 2 BLR 1-894 (1980). Under fee-shifting statutes, the United States Supreme Court has held that courts 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. See *Pennsylvania v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986). The lodestar method is the appropriate starting point for calculating fee awards under the Act. See *Gosnell*, 724 F.3d at 572; *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 289 (4th Cir. 2010).

Hourly Rate

When attorneys prevail on behalf of a claimant under the Act, they are entitled to a "reasonable attorney's fee" paid by the responsible party. 30 U.S.C. §932(a), incorporating 33 U.S.C. §928(a) of the Longshore and Harbor Workers' Compensation Act. An approved fee must take into account "the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to

¹ We affirm, as unchallenged on appeal, the Claims Examiner's award of the following hourly rates: \$300.00 for Attorneys Delph's and Austin's services; \$200.00 for Attorney Rachel Wolfe's services; \$150.00 for Attorneys Herman's and Hobbs's services; and \$100.00 for legal assistant services. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

² We will apply the law of the United State Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

which the claim was raised, the level at which the representative entered the proceedings,” and “any other information which may be relevant to the amount of [the] fee requested.” 20 C.F.R. §725.366(b).

An attorney’s reasonable hourly rate is “calculated according to the prevailing market rates in the relevant community.” *Blum v. Stenson*, 465 U.S. 886, 895 (1984). “[T]he rate that lawyers of comparable skill and experience can reasonably expect to command within the venue of the court of record” comprises the market rate. *Geier v. Sundquist*, 372 F.3d 784, 791 (6th Cir. 2004); see *B & G Mining, Inc. v. Director, OWCP [Bentley]*, 522 F.3d 657, 664 (6th Cir. 2008). 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; see *Gosnell*, 724 F.3d at 571.

Employer contends the Claims Examiner erred in approving Mr. Wolfe’s requested hourly rate of \$350.00 because, in its view, Counsel’s supporting documentation does not support \$350.00 per hour as a market rate for similar work. Employer’s Brief at 4. Employer argues prior fee awards in black lung cases are not probative of Counsel’s market rate because they do not reflect rates paid by fee-paying clients for similar services and suggests \$300.00 per hour “is more in keeping with the level of work rendered by Mr. Wolfe in this matter.” *Id.* at 3-4.

Initially, we reject Employer’s assertion that prior fee awards in black lung cases are not probative of prevailing market rates. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has expressly recognized that “the most reliable indicator of prevailing market rates in a black lung case will be evidence of rates allowed in other black lung cases.” *Gosnell*, 724 F.3d at 573. We further see no error in the Claims Examiner’s approval of the requested hourly rate.

In support of Mr. Wolfe’s requested rate, Counsel submitted a list of sixty-eight black lung cases in which he received an hourly rate of \$300.00 for legal services rendered before the district director between February 9, 2002 and July 2, 2015. Fee Application at 4-11. He additionally noted he has “over 49 years of experience representing clients” from many states including Virginia and West Virginia and submitted an excerpt from the 2014 Altman & Weil Survey of Law Firm Economics reflecting an average standard hourly billing rate of \$426.00 for attorneys with thirty-one or more years of experience in the South Atlantic region. *Id.* at 2, 35.

In awarding \$350.00 per hour for Mr. Wolfe’s services over Employer’s objection, the Claims Examiner stated she considered the factors set forth at 20 C.F.R. §725.366(b) and explained the District Office had “recently” awarded Mr. Wolfe \$350.00 per hour for

his services and that the rate “seems reasonably commensurate with the necessary work done.” Fee Award at 5. Although the Claims Examiner’s explanation is brief, it is sufficient to reveal the basis for her determination: she considered the regulatory factors, considered Employer’s objection, and declined to reduce the requested rate because she found it consistent with rates recently awarded and reasonably commensurate with the work performed. *Id.* at 4-5.

Moreover, although Employer generally argues prior fee awards do not reflect a market rate, it does not specifically challenge the Claims Examiner’s determination that the District Office recently awarded Mr. Wolfe the requested rate or explain why reliance on such awards was improper in this case. Rather, Employer suggests \$300.00 per hour “is more in keeping with the level of work rendered by Mr. Wolfe in this matter.” Employer’s Brief at 4. However, the issue on appeal is not whether Employer would have weighed the evidence differently, but whether it has shown the Claims Examiner’s approval of the requested rate to be arbitrary, capricious, an abuse of discretion, or not in accordance with applicable law. *See Gosnell*, 724 F.3d at 568-69.

On this record, Employer has not made that showing. Counsel’s submission documented Mr. Wolfe’s extensive experience and prior awards of \$300.00 per hour between 2002 and 2015, and the Claims Examiner found \$350.00 per hour consistent with more recent awards and reasonably commensurate with the work performed in this case. Given the broad discretion afforded in determining a reasonable hourly rate, we affirm the award of an hourly rate of \$350.00 for Mr. Wolfe’s services. *See Gosnell*, 724 F.3d at 568-69.

Quarter-Hour Billing Increments

Employer challenges Counsel’s use of quarter-hour minimum billing increments. Employer’s Brief at 4-10; Employer’s Reply at 7-15. Contrary to Employer’s contention, a claims examiner has discretion to award a fee based on quarter-hour minimum increments. *See Gosnell*, 724 F.3d at 576; *Bentley*, 522 F.3d at 666.

We also reject Employer’s assertion that an excessive number of hours were billed because Counsel did not efficiently use junior associates, paralegals, or legal assistants to reduce fees and costs. Employer’s Brief at 5; Employer’s Reply at 14-15. The question in determining a compensable fee is not whether it would have been less costly for Counsel to delegate work to paralegals or legal assistants. *See, e.g., Moreno v. City of Sacramento*, 534 F.3d 1106, 1115 (9th Cir. 2008) (“The court may permissibly look to the hourly rates charged by comparable attorneys for similar work but may not attempt to impose its own judgment regarding the best way to operate a law firm, nor to determine if different staffing decisions might have led to different fee requests.”). Rather, it is whether the work and

time that Counsel requested were reasonable and necessary to establish Claimant's entitlement to benefits at the time Counsel performed the work. *See Murphy v. Director, OWCP*, 21 BLR 1-116, 1-120 (1999). Because Employer has not shown the Claims Examiner abused her discretion, we affirm her determination to allow the challenged time entries. *See Gosnell*, 724 F.3d at 576; *Whitaker v. Director, OWCP*, 9 BLR 1-216, 1-217 (1986).

As Employer raises no further challenge to the number of hours expended, we affirm the Claims Examiner's award of \$8,185.00 in attorney's fees for 37.85 hours of combined attorney and legal assistant services rendered.

Reimbursable Expenses

Employer further contends the Claims Examiner erred in awarding \$170.52 in costs for Claimant's mileage for travel to and from the June 10, 2019 medical evaluation with Dr. Green, asserting the regulations authorize reimbursement only for attorney travel expenses. Employer's Brief at 16 (quoting 20 C.F.R. §725.366(c)). Contrary to Employer's contention, the Claims Examiner rationally applied 20 C.F.R. §725.366(c) to find Claimant's travel costs supporting his claim for modification were reasonable, unreimbursed expenses incurred in establishing his case. As Employer raises no further challenges to the Claims Examiner's award of expenses, we affirm her award of \$2,130.52 in expenses. *See Jones*, 21 BLR at 1-108.

Accordingly, the Claims Examiner's Proposed Order Supplemental Award Fee for Legal Services is affirmed.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge