

U.S. Department of Labor

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



BRB Nos. 24-0284 BLA
and 24-0285 BLA

PATRICIA COLLINS)
(o/b/o and Widow of ROBERT COLLINS))

Claimant-Petitioner)

v.)

HERITAGE COAL COMPANY, LLC c/o)
PEABODY ENERGY CORPORATION)

Employer-Respondent)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 08/11/2025

DECISION and ORDER

Appeal of the Order Awarding Attorney's Fees of William P. Farley,
Administrative Law Judge, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for Claimant.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE,
Administrative Appeals Judge, and ULMER, Acting Administrative Appeals
Judge.

PER CURIAM:

Claimant's counsel (Counsel) appeals Administrative Law Judge (ALJ) William P.
Farley's Order Awarding Attorney's Fees (2020-BLA-05344; 2020-BLA-05508) rendered

in connection with the successful prosecution of a miner's claim and survivor's claim¹ filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). On October 12, 2023, the ALJ granted Employer's motion to remand the cases for the Black Lung Disability Trust Fund to pay benefits pursuant to an agreement between Employer and the Department of Labor. Order Granting Motion for Remand. Under that agreement, Employer would remain responsible for any attorney fees. *Id.*

Thereafter, Counsel filed a complete, itemized fee petition with the ALJ requesting \$18,099.35 for legal services and costs performed before the Office of Administrative Law Judges (OALJ) from January 25, 2022 to February 9, 2024.² Employer filed objections to the fee petition, contesting the requested hourly rates, the use of quarter-hour billing, and various time entries it deemed administrative, excessive, or duplicative. On March 13, 2024, Counsel filed a motion for leave to file a reply and attached his reply, along with a supplemental fee petition for time spent litigating the fee.³

On March 21, 2024, the ALJ denied Counsel's motion to file a reply, citing 29 C.F.R. §18.33(d) and further finding Counsel failed to demonstrate good cause to file a reply. Order Denying Leave to File Reply; *see also* Notice of Assignment, Hearing, and

¹ The Miner filed his claim on December 12, 2017. Miner's Claim (MC) Director's Exhibit 3. He subsequently died on December 14, 2019. Survivor's Claim (SC) Director's Exhibit 5. Claimant is the widow of the Miner and is pursuing the miner's claim on his behalf along with her own survivor's claim, filed on January 14, 2020. SC Director's Exhibit 3.

² The total \$18,099.35 fee requested represents \$5,550.00 for 18.5 hours of attorney services by Attorney Austin P. Vowels at an hourly rate of \$300.00; \$806.25 for 3.75 hours of attorney services by Attorney Lindsey Zielinski at an hourly rate of \$215.00; \$4,132.50 for 28.5 hours of paralegal services by Ms. Desire Smith at an hourly rate of \$145.00; \$3,843.75 for 30.75 hours of paralegal services by Ms. Leslie Jackson at an hourly rate of \$125.00; \$1,703.75 for 11.75 hours of legal assistant services by Ms. Sarah Agnew at an hourly rate of \$145.00; and \$2,063.10 in expenses.

³ Counsel cited 29 C.F.R. §§18.33(d), 18.90(c) in support of his motion for leave to file a reply to Employer's objections and addressed why he believed the challenged time entries were not administrative, excessive, or redundant. Motion for Leave to File Reply and Reply to Response. Counsel's reply requested an additional \$750.00 for 2.5 hours of attorney services by Attorney Vowels in litigating the fee at an hourly rate of \$300.00. *Id.* at 13-14.

Initial Prehearing Order (Prehearing Order) at 7.⁴ In his April 3, 2024 Order Awarding Attorney's Fees (Fee Order), the ALJ found the requested hourly rates were reasonable, reduced certain time entries billed as excessive or clerical, granted the requested costs in full, and awarded a total fee of \$17,657.10.⁵

On appeal, Counsel contends the ALJ erred in rejecting his reply to Employer's objections to the fee petition and thus his request for an additional fee. He also challenges the ALJ's reduction in the amount of time billed. Neither Employer nor the Acting Director, Office of Workers' Compensation Programs, has filed a response brief.

When an attorney prevails on behalf of a claimant under the Act, the employer or its insurer that is liable for benefits shall also pay a "reasonable attorney's fee" to the claimant's counsel. 30 U.S.C. §932(a), incorporating 33 U.S.C. §928. The amount of an attorney fee award by an ALJ 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

⁴ In his Prehearing Order, the ALJ indicated that 29 C.F.R. §18.33 (as well as 20 C.F.R. §§18.34-18.35) applies to "[a]ll written requests for relief." Prehearing Order at 7. The applicable regulation states:

Opposition or other response to a motion filed prior to hearing. A party to the proceeding may file an opposition or other response to the motion within 14 days after the motion is served. The opposition or response may be accompanied by affidavits, declarations, or other evidence, and a memorandum of the points and authorities supporting the party's position. Failure to file an opposition or response within 14 days after the motion is served may result in the requested relief being granted. **Unless the judge directs otherwise, no further reply is permitted** and no oral argument will be heard prior to hearing.

29 C.F.R. §18.33(d) (bold emphasis added).

⁵ The ALJ reduced the time claimed by: 0.30 hours for work performed by Attorney Vowels on June 12, 2023 and July 5, 2023, resulting in a reduction of \$90.00 at an hourly rate of \$300.00; 2.30 hours for work performed by Ms. Smith on August 17, 2022, December 15, 2022, January 3, 2023, February 22, 2023, April 12, 2023, April 17, 2023, April 24, 2023, and April 28, 2023, resulting in a reduction of \$333.50 at an hourly rate of \$145.00; and 0.15 hours for work performed by Ms. Jackson on April 6, 2023, resulting in a reduction of \$18.75 at an hourly rate of \$125.00. Order Awarding Attorney's Fees (Fee Order) at 5-7. Thus, the ALJ awarded \$15,594.00 in fees and \$2,063.10 in expenses. *Id.* at 7.

accordance with applicable law.⁶ See *Zeigler Coal Co. v. Director, OWCP* [Hawker], 326 F.3d 894, 902 (7th Cir. 2003); *B & G Mining, Inc. v. Director, OWCP* [Bentley], 522 F.3d 657, 661 (6th Cir. 2008); *Jones v. Badger Coal Co.*, 21 BLR 1-102, 1-108 (1998) (en banc). Services that counsel billed are compensable if the amount of time is not excessive and, at the time the work was performed, counsel could reasonably regard it as necessary to establish Claimant's entitlement. See *Lanning v. Director, OWCP*, 7 BLR 1-314, 316 (1984).

ALJ's Rejection of Counsel's Reply

Counsel alleges the ALJ erroneously denied him an opportunity to reply to Employer's objections to his fee petition and thus his supplemental fee request by applying 29 C.F.R. §18.33(d). Claimant's Brief at 5-7. We disagree.

An ALJ exercises broad discretion in resolving procedural and evidentiary matters. See *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Thus, a party seeking to overturn the disposition of a procedural or evidentiary issue must establish the ALJ's action represented an abuse of discretion. See *V.B. [Blake] v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

The ALJ specified in his prehearing order to the parties that "[a]ll written requests for relief" must conform to, among other regulations, 20 C.F.R. §18.33. Prehearing Order at 7 (emphasis added). He further noted that while Counsel sought to reply to Employer's objections as it "may afford the ALJ more information to assist in the process," Counsel "could have made such information known in the application." Order Denying Motion for Leave to File Reply. Thus, he found Counsel did not show good cause to file a reply. *Id.*

The ALJ provided notice to the parties of his intention to apply this regulation, and there is no specific regulation or OALJ Rule providing Counsel with the right to file a reply to Employer's objections to the fee petition.⁷ Thus, the ALJ's refusal to allow Counsel's

⁶ This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit because the Miner performed his coal mine employment in Illinois. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 5.

⁷ While Section 725.366 addresses the filing of an application for an attorney's fee and its contents, it does not address responsive pleadings. 20 C.F.R. §725.366. The OALJ Rules of Practice and Procedure also do not specifically address responses or replies to a fee petition. While 29 C.F.R. §18.33(d) addresses motions, it applies, as written, only to opposition or other responses filed "prior to [the] hearing." Counsel points to 29 C.F.R.

reply brief and thus his corresponding supplemental fee request for defending the award⁸ did not constitute an abuse of discretion. *Dempsey*, 23 BLR at 1-63; *Clark*, 12 BLR at 1-153; *Jones*, 21 BLR at 1-108.

Reduced Time Entries

The ALJ partially reduced time entries for Attorney Vowels, and Mss. Smith and Jackson, because he found merit in Employer's objection that they were excessive given the tasks performed or clerical in nature. Fee Order at 5-6. The ALJ reduced the total requested hours by 2.75 hours, which amounted to a reduction of \$433.25.⁹ *See id.* at 7; Fee Petition; *supra* note 5.

Counsel initially contends the ALJ erred in reducing Ms. Jackson's April 3, 2023 entry from 0.25 hour to 0.10 hour, as the ALJ misstates the time billed for that entry. Counsel's Brief at 9. We agree. Ms. Jackson's April 3, 2023 time entry was for 1.5 hours for "[f]urther review of file, further preparations of brief – medical evidence portion." Fee Petition at 20. Thus, the ALJ erroneously indicated the April 3, 2023 entry was for 0.25 hour.

We note the April 3, 2023 entry was the sole reduction for Ms. Jackson's requested time, and the ALJ approved the full time requested for similar work, i.e., preparing for and drafting other portions of Claimant's brief. *See* Fee Petition at 20-21; Fee Order at 5. Thus, it is unclear which entry the ALJ intended to reduce. Given the ALJ's error, as well as the lack of contrary evidence or objection regarding the reasonableness of this time entry, we reverse the ALJ's reduction of Ms. Jackson's time by 0.15 hours at an hourly rate of

§18.90(c), but as he acknowledges, this regulation provides only that an ALJ retains jurisdiction to dispose of motions after the decision, such as an attorney's fee petition. Counsel's Brief at 5. Thus, it does not support his contention that he had a right to file a reply. While Counsel contends not allowing a reply violates notions of "fair play," Counsel's Brief at 6-7, we note the regulations allow the parties to seek reconsideration of a fee order. 20 C.F.R. §725.366(d),(e).

⁸ Because the ALJ permissibly rejected Counsel's reply brief, we affirm the ALJ's refusal to award an additional \$750.00 in fees for 2.5 hours of attorney services at an hourly rate of \$300.00 by Attorney Vowels spent preparing the motion to file a reply and the reply. Claimant's Brief at 3-7; Motion for Leave to File Reply and Reply to Response at 13-14; *see Dempsey*, 23 BLR at 1-63; *Clark*, 12 BLR at 1-153.

⁹ Counsel requested a fee of \$16,027.25 and the ALJ awarded \$15,594.00. Fee Petition; Fee Order at 7.

\$125.00, and the resulting reduction of \$18.75 in the fee awarded. *See Hawker*, 326 F.3d at 899-902 (proper inquiry is whether the expenses were reasonable to establish Claimant's entitlement to benefits at the time the expenses were incurred); *Adams v. Director, OWCP*, 886 F.2d 818, 826 (6th Cir. 1989) (reversal is warranted where no factual issues remain to be determined and no further factual development is necessary); *see also Fox v. Vice*, 563 U.S. 826, 838 (2011) ("The determination of fees should not result in a second major litigation.") (citation modified).

Counsel next argues that the ALJ's reduction of several time entries from 0.25 hour to 0.10 hour for Attorney Vowels and Ms. Smith is arbitrary given such "minimal" quarter-billing is permissible.¹⁰ Counsel's Brief at 8-10. We disagree.

While attorneys are permitted to bill in quarter-hour increments, an ALJ may determine if such time expended is reasonable based on the specific task performed. *See Hawker*, 326 F.3d at 902 ("[W]e review the question of reasonableness of time spent by a lawyer on a particular task in the course of litigation under a highly deferential version of the 'abuse of discretion standard.'"); *see also See Eastern Associated Coal Corp. v. Director, OWCP [Gosnell]*, 724 F.3d 561, 576-78 (4th Cir. 2013) (rejecting employer's blanket challenge to quarter-hour billing, but acknowledging such billing can lead to over-billing); *Bentley*, 522 F.3d at 657 (ALJs may approve quarter-hour billing, as long as the total billable hours is reasonable in relation to the work performed); 20 C.F.R. §725.366(b).

Notably, the ALJ did not make a blanket reduction of all quarter-hour entries; rather, he reasonably found certain tasks did not require fifteen minutes to complete, such as sending and reviewing emails or reviewing short orders. *See Gosnell*, 724 F.3d at 578; *Lanning*, 7 BLR at 1-317 (ALJ has broad discretion to determine reasonableness of time entries); Fee Order at 5-6; Fee Petition at 22-25. Thus, we hold the ALJ was within his discretion to reduce Attorney Vowels's time by 0.30 hours and Ms. Smith's time by 1.05 hours. Fee Order at 5-6.

Finally, Counsel contends the ALJ's reduction of two other entries by Ms. Smith, both dated August 17, 2022,¹¹ as excessive given the task performed, was arbitrary. Counsel's Brief at 11. He argues that she "spent the time she spent, plain and simple." *Id.*

¹⁰ These reductions include Attorney Vowels's entries dated June 12, 2023 and July 5, 2023, and Ms. Smith's entries dated December 15, 2022, January 3, 2023, February 22, 2023, April 12, 2023, April 17, 2023, April 24, 2023, and April 28, 2023. Fee Petition at 22-25; Fee Order at 5.

¹¹ One entry included 1.75 hours for "[p]reparation of medical records and exhibits for expert review and consideration," which the ALJ reduced by one hour. Fee Petition at

Counsel has failed to demonstrate the ALJ abused his discretion in reducing these time entries. Fee Order at 5-7. ALJs are afforded “great deference” in determining whether the billable hours are reasonable in relation to the work performed because they are “in a much better position than the appellate court to make this determination.” *Hawker*, 326 F.3d at 902. Further, the ALJ reduced Ms. Smith’s August 17, 2022 entry requesting 1.75 hours because it was “[c]lerical in nature and not compensable” as opposed to being excessive. Fee Order at 5. As Counsel does not specifically challenge this finding, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Fee Order at 5.

Because Counsel has not demonstrated the ALJ abused his discretion, we defer to the ALJ’s determination and affirm the ALJ’s reduction of Ms. Smith’s requested time by 1.25 hours for the time entries dated August 17, 2022. 20 C.F.R. §725.366; *see Hawker*, 326 F.3d at 902; Fee Order at 5-7. We additionally affirm his determination that the remaining time entries and costs were fully compensable. *See Hawker*, 326 F.3d at 902; *Lanning*, 7 BLR at 1-317; Fee Order at 5-7.

21; Fee Order at 5. The other entry was 0.75 hour for “[r]eview of notice of hearing and prehearing order for pre-conference filing requirement and evidentiary deadlines for exhibits,” which the ALJ reduced by 0.25 hour. Fee Petition at 21; Fee Order at 5.

Accordingly, we affirm in part, reverse in part, and modify the ALJ's Order Awarding Attorney's Fees to reflect an award of \$5,460.00 for 18.2 hours at an hourly rate of \$300.00 for Attorney Vowels; \$806.25 for 3.75 hours at an hourly rate of \$215.00 for Attorney Zielinski; \$3,799.00 for 26.2 hours at an hourly rate of \$145.00 for Ms. Smith; \$3,843.75 for 30.75 hours at an hourly rate of \$125.00 for Ms. Jackson; and \$1,703.75 for 11.75 hours at an hourly rate of \$145.00 for Ms. Agnew, and \$2,063.10 in expenses, for a total award of \$17,675.85 in fees and costs. We remand the claims to the ALJ for entry of an order awarding fees consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge