

U.S. Department of Labor

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



BRB No. 25-0077 BLA

KENNETH R. BOWSER

Claimant-Petitioner

v.

WEST POINT COAL MINING
INCORPORATED

and

ROCKWOOD CASUALTY INSURANCE
COMPANY

Employer/Carrier-
Respondents

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 12/22/2025

DECISION and ORDER

Appeal of the Attorney Fee Order and Order Denying Request for Revision of Attorney Fee Order of Natalie A. Appetta, Acting District Chief Administrative Law Judge, United States Department of Labor.

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township, Pennsylvania, for Claimant.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant's counsel (Counsel) appeals Acting District Chief Administrative Law Judge (ALJ) Natalie A. Appetta's Attorney Fee Order and Order Denying Request for Revision of Attorney Fee Order (2023-BLA-05702) rendered in connection with the successful prosecution of a miner's claim¹ filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).²

Counsel requested \$2,365.75 in fees and expenses for work performed before the ALJ, including: \$750 for 2.5 hours of attorney services at an hourly rate of \$300, \$15.75 for 0.15 hour of paralegal work at an hourly rate of \$105, and expenses totaling \$1,600.

In the ALJ's November 15, 2024 Attorney Fee Order, she misstated Counsel's request as totaling \$1,615.75, omitting the \$750 in attorney fees. Attorney Fee Order at 1. She disallowed the 0.15 hours of paralegal time (\$15.75) as clerical work, found the \$1,600 expense for a physician's medical report compensable, and awarded that amount.³ *Id.* at 2-3.

By letter dated November 25, 2024, Counsel requested reconsideration noting that her request included \$750 in attorney fees for preparing and filing Claimant's Closing Brief and attached her original fee petition. By Order dated December 4, 2024, the ALJ denied Counsel's request as insufficiently specific to award fees. Order Denying Request for Revision at 2-3.

On appeal, Counsel argues without opposition that the ALJ erred in denying her fee request for \$750 in attorney fees for time spent preparing Claimant's Closing Brief.⁴

¹ The ALJ issued a Decision and Order Awarding Benefits on May 9, 2024.

² In this case, the ALJ issued two Attorney Fee Orders dated November 15, 2024; one attorney fee order was for services performed by Ms. Lynda D. Glagola of Lungs at Work and the other was for services performed by Ms. Deanna L. Istik of Sinatra & Istik Law Office, PLLC. Only the latter is the subject of this appeal.

³ The ALJ also noted that no party filed objections to the fee petition. Attorney Fee Order at 2.

⁴ We affirm, as unchallenged on appeal, the ALJ's disallowance of 0.15 hours (\$15.75) of paralegal services. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Attorney Fee Order at 2-3.

Neither Employer nor the Acting Director, Office of Workers' Compensation Programs, has filed a response brief.

The amount of an attorney's fee award is discretionary and must be upheld on appeal unless the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with applicable law.⁵ See *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).

In reviewing Counsel's request for reconsideration, the ALJ found Counsel's fee application nowhere set forth the entire amount of fees and costs requested and that the invoice itemizing \$750 in fees for 2.5 hours of work at an hourly rate of \$300 per hour for preparing and filing Claimant's Closing Brief "does not indicate who performed this work, or that person's professional status."⁶ Order Denying Request for Revision at 2-3. The ALJ thus denied the \$750 fee request as "vague" and because it "insufficiently describes the person performing the work." *Id.* at 3. In challenging this finding, Counsel asserts that her fee petition "fully complies" with Section 725.366(a) because: 1) Counsel's cover letter to the fee petition indicates Counsel, herself, submitted the fee petition and billed at \$300.00 per hour; 2) the attached invoice identifies the services rendered as the preparation of Claimant's Closing Brief and identifies Counsel's hourly rate of \$300; and 3) Counsel signed Claimant's Closing Brief. Claimant's Brief at 3.

The relevant regulation mandates that a representative seeking a fee must file an application "supported by a complete statement of the extent and character of the necessary work done, and shall indicate the professional status (e.g., attorney, paralegal, law clerk, lay representative or clerical) of the person performing the work, and the customary billing

⁵ The Benefits Review Board will apply the law of the United States Court of Appeals for the Third Circuit because Claimant performed his last coal mine employment in Pennsylvania. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 6; Hearing Tr. at 24.

⁶ The ALJ correctly captured Counsel's invoice as providing:

Federal Black Lung

| Type | Date | Notes | Quantity | Rate | Total |
|---------|------------|--|----------|--------------|-----------------|
| Service | 02/15/2024 | Preparation of Claimant's Closing Brief; Utilizing electronic filing system, filed Closing Brief | 2.50 | \$300.00 | \$750.00 |
| | | | | Total | \$750.00 |

rate for each such person.” 20 C.F.R. §725.366(a). We agree with Claimant’s argument that the ALJ abused her discretion in finding Counsel’s unopposed request for \$750 in attorney services does not satisfy this requirement.

Contrary to the ALJ’s finding, Counsel accurately states that her Form CM-972 “Application for Approval of a Representative’s Fee in a Black Lung Claim Proceeding Conducted by the U.S. Department of Labor” indicated Counsel’s total fee request for services and costs as \$2,365.75. Attorney Fee Petition at 3. This total includes the 2.5 hours of attorney services (\$750) that Counsel billed on February 15, 2024, for preparing and filing Claimant’s Closing Brief. *Id.* at 3, 6. Although the ALJ accurately observed the face of Counsel’s invoice for this service does not specify the professional status of the person performing the work, Counsel’s attached October 31, 2024 cover letter specifies her status as an attorney, she bills at \$300 per hour, and her fee request is reasonable in light of the work performed. *Id.* at 1.

It further specifies that Counsel employs the services of a paralegal from time to time and that when she does the invoice she denotes paralegal services with a notation of “ADM” and an hourly rate of \$105. *Id.* As Counsel’s itemized invoice seeks fees for 2.5 hours preparing and filing Claimant’s Closing Brief at a requested hourly rate of \$300, we see no omission or ambiguity as to the professional status of the person performing this work. The ALJ abused her discretion in finding otherwise.⁷ *See Jones*, 21 BLR at 1-108; *Abbott*, 13 BLR at 1-16; *see generally Scott v. Mason Coal Co.*, 289 F.3d 263, 270 (4th Cir. 2002) (reversing denial of benefits where “only one factual conclusion is possible”). We therefore reverse the ALJ’s denial of Counsel’s request for a revised Attorney Fee Order that includes the \$750 in itemized attorney services.

⁷ Moreover, review of the record reflects the ALJ’s Decision and Order on the merits was served on Deanna Istik and that she, alone, signed Claimant’s Closing Brief. Decision and Order at 33 (Service Sheet); Claimant’s Closing Brief at 11.

Accordingly, the ALJ's Attorney Fee Order and Order Denying Request for Revision of Attorney Fee Order are reversed, and the case is remanded for the ALJ to award the requested \$750 attorney-time entry consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge