U.S. Department of Labor

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

KATHY CHAMBLISS (o/b/o STANLEY W. CHAMBLISS) Claimant-Respondent v. HERITAGE COAL COMPANY LLC and PEABODY ENERGY CORPORATION Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	BRB No. 24-0442 BLA **NOT-PUBLISHED** DATE ISSUED: 01/29/2026
KATHY CHAMBLISS (o/b/o STANLEY CHAMBLISS) Claimant-Petitioner v. HERITAGE COAL COMPANY, LLC and	BRB No. 25-0048 BLA

PEABODY ENERGY CORPORATION	)
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Employer/Carrier-Respondents	)
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DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)
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Party-in-Interest	)

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jason A. Golden, Administrative Law Judge, United States Department of Labor, and the Proposed Order Supplemental Award Fee for Legal Services of Annette Goff, Claims Examiner, United States Department of Labor.

Austin P. Vowels and David W. Littrell III (Vowels Law PLC), Henderson, Kentucky, for Claimant.

H. Brett Stonecipher, Ryan D. Thompson and Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer.

Marcus W. Andrews (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2021-BLA-05571) rendered on a claim filed on March 10, 2020, pursuant to the Black Lungs Benefit Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

Claimant also appeals Claims Examiner Annette Goff's Proposed Order Supplemental Award Fee for Legal Services (District Director's Fee Award).[1]

The ALJ's Decision and Order Awarding Benefits

The ALJ found Employer is the responsible operator, accepted the parties' stipulation of ten years of qualifying coal mine employment, and found Claimant established complicated pneumoconiosis. Thus, he found Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304. He further found the Miner's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203, and awarded benefits.

On appeal, Employer asserts the ALJ erred in finding it was the responsible operator and in invoking the irrebuttable presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response, urging the Board to affirm the ALJ's responsible operator finding.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[2] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc*., 380 U.S. 359, 362 (1965).

Responsible Operator

The responsible operator is the potentially liable operator that most recently employed the miner for a cumulative period of not less than one year.[3] The district director

[1] Claimant is the widow of the Miner, who died on January 12, 2024, while his case was pending before the ALJ. Notice of Death and Motion to Substitute Party (Jan. 26, 2024). By Order dated February 19, 2025, the Benefits Review Board consolidated Employer's appeal of the ALJ's Decision and Order Awarding Benefits and Claimant's appeal of the district director's fee award for purposes of decision only. *Chambliss v. Heritage Coal Co.*, BRB Nos. 24-0442 BLA and 25-0048 BLA (Feb. 19, 2025) (Order) (unpub.).

[2] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit as the Miner performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 13.

[3] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death

is initially charged with identifying and notifying operators that may be liable for benefits and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director designates a responsible operator, that operator may be relieved of liability only if it shows either that it is financially incapable of assuming liability for benefits or that another "potentially liable operator" that is financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

In a Proposed Decision and Order dated March 3, 2021, the district director named Employer as the designated responsible operator and found the Miner's subsequent employment with Allied Barton Security Services was "not coal mine employment." Director's Exhibit 84. The district director explained:

> Based on the miner's social security earnings record, the [miner] had earnings for Heritage Coal Company LLC from 1978 to 1983, and then again from 1986 to 1992. The miner alleged that his last coal mine employment was with the operator. Per the miner's state compensation award, his last date of coal mine employment was in September 1991. The operator was self-insured thru [sic] Peabody Energy Corp on the miner's last date of exposure.

Id. at 8. Thereafter, Employer requested a hearing and the case was transferred to the Office of Administrative Law Judges. Director's Exhibits 85, 92.

Before the ALJ, Employer argued the Miner worked for a subsequent operator, Allied Barton Security Services, from May 2013 to August 2019. Post-Hearing Brief at 15-16. The ALJ rejected Employer's assertion that the Miner's employment with Allied Barton Security Services constituted coal mine employment, and found Employer is the properly designated responsible operator. Decision and Order at 14-16, 19.

Employer argues the ALJ failed to properly apply the function portion of the function-situs test for determining whether an individual qualifies as a "miner." Employer's Brief at 14-18 . We disagree.

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must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

A "miner" is "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal." 30 U.S.C. §902(d). To qualify as a "miner," an individual must establish that: (1) he worked in or around a statutorily defined coal mine (the "situs" test), and (2) his duties involved the extraction or preparation of coal or involved appropriate coal mine construction or transportation that are an "integral" or "necessary" part of the coal mining process (the "function" test). *Navistar, Inc. v. Forester*, 767 F.3d 638, 645-46 (6th Cir. 2014). The implementing regulation provides "a rebuttable presumption that any person working in or around a coal mine or coal preparation facility is a miner." 20 C.F.R. §725.202(a); *see also* 20 C.F.R. §725.101(a)(19); *Stephen v. Consolidation Coal Co.*, 26 BLR 1-71, 1-76 (2025).

A security guard's work can constitute coal mine employment if it involves duties beyond simply providing security. *See Sammons v. EAS Coal Co.*, 980 F.2d 731 (Table), 1992 WL 348976 at 2 (6th Cir. Nov. 24, 1992) (unpub.) (night watchman worked as a miner because part of his shift included safety checks, repairs, and replacements that kept the mine "operational, safe, and in repair"); *Wackenhut Corp. v. Hansen*, 560 F. App'x 747, 750-51 (10th Cir. 2014) (unpub.) (patrolling mines and inspecting equipment are integral to mine operation because additional duties "do not negate [a claimant's] essential work in insuring the safe operation of the mine"). But sitting in a guardhouse and occasionally driving around a mine, on the other hand, are not sufficiently integral to the extraction or preparation of coal and are "merely convenient." *See Falcon Coal Co. v. Clemons*, 873 F.2d 916, 922 (6th Cir. 1989).

In completing form CM-913 Employment History, the Miner stated his occupation with Allied Barton Security Services was working as a "Security Guard" and he checked "Yes" in response to whether this employment involved exposure to dust, gas, and fumes. Director's Exhibit 3. He testified that two-to-three percent of this work involved patrolling the mines for intruders and that he was not responsible for moving supplies or refilling safety items; the other portion of his work time was spent in an office on one of the mine properties. Director's Exhibit 26 at 16-17; Hearing Transcript at 14-15.

Contrary to Employer's contention, we see no error in the ALJ's determination that the Miner's duties as a security guard did not meet the function requirement. As the record contains no indication that the Miner's work involved any operational, safety, and repair duties beyond simply providing security, the ALJ permissibly found his security guard work was not integral to the extraction or preparation of coal.[4] *Compare Clemons*, 873

[4] As the ALJ explicitly found the Miner's security guard work was "not integral to the extraction or preparation of coal," we reject Employer's assertion that the ALJ failed to address the function prong or specifically analyze whether the Miner's job duties were

F.2d at 922, *with Sammons*, 1992 WL 348976 at 2, *and Hansen*, 560 F. App'x at 750-51; *see* Decision and Order at 16; Director's Exhibit 26 at 15-16; Hearing Transcript at 15. We thus affirm the ALJ's finding that the Miner's work as a security guard was not coal mine employment.

Employer does not allege it is financially incapable of assuming liability for benefits or that another "potentially liable operator," other than Allied Barton Security Services, more recently employed the Miner for at least one year and is financially capable of assuming liability. Consequently, we affirm the ALJ's finding that Employer is the properly designated responsible operator.[5] 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b).

Invocation of the Section 411(c)(3) Presumption: Complicated Pneumoconiosis

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner was totally disabled due to pneumoconiosis if he suffered from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities, greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc). The ALJ found the x-ray evidence established complicated pneumoconiosis and that the other categories of evidence did not diminish that conclusion.

Employer contends the ALJ erred in weighing the x-ray and medical opinion evidence.

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necessary to keep the mine operational. Decision and Order at 16; Employer's Brief at 14 (unpaginated).

[5] As we affirm the ALJ's finding that the Miner's employment with Allied Barton Security Services does not meet the function prong of the function-situs test, we reject Employer's assertion that the ALJ erred in suggesting the Miner's working two-to-three percent of the time around coal mines in this role as a security guard is insufficient to satisfy the situs prong of the test. Employer's Brief at 18 (unpaginated). Any error the ALJ may have made in this regard is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

X-Ray Evidence

The ALJ considered three readings of one x-ray dated August 14, 2020.[6] Decision and Order at 4-6; Director's Exhibits 18 at 23, 23 at 2; Claimant's Exhibit 1 at 2. All the x-ray readers are Board-certified radiologists and B readers.

Drs. Crum and Alexander interpreted it as positive for both simple and complicated pneumoconiosis, while Dr. Adcock read it as negative for both simple and complicated pneumoconiosis. Director's Exhibits 18 at 23, 23 at 2; Claimant's Exhibit 1 at 2. Dr. Crum diagnosed small opacities consistent with pneumoconiosis of 1/1 profusion in all lung zones and Category A large opacities consistent with pneumoconiosis. He commented "probable R[ight] mid lung A opacity (linear/nodular) vs. neoplasm" and noted "[c]omparison to priors + [computed tomography] CT [scan] chest recommended for confirmation." Director's Exhibit 18 at 23. Dr. Alexander likewise identified small opacities consistent with pneumoconiosis of 1/1 profusion in all lung zones and Category A large opacities consistent with pneumoconiosis. He noted "a poorly marginated opacity in the right mid lung zone measuring approximately 20 x 5mm" that "could be due to a [C]ategory A complicated [pneumoconiosis], infiltrate, or scarring, or possibly lung cancer." He likewise recommended further evaluation with CT scans. Claimant's Exhibit 1 at 1.

By contrast, Dr. Adcock noted the presence of small opacities consistent with pneumoconiosis, 0/1 profusion, and an absence of large opacities consistent with the disease. Director's Exhibit 23 at 2.

The ALJ found Drs. Crum and Alexander diagnosed complicated pneumoconiosis in checking the International Labor Office (ILO) x-ray form boxes indicating Category A large opacities consistent with pneumoconiosis, reasoning that the doctors' comments ruling out another etiology do not diminish that diagnosis. Decision and Order at 5-6. Finding the interpreting physicians equally qualified as dually-qualified Board-certified radiologists and B readers, the ALJ concluded the preponderance of the x-ray interpretations is positive for simple and complicated pneumoconiosis. *Id.*

Employer argues the ALJ erred in disregarding Drs. Crum's and Alexander's comments, which Employer alleges equivocate as to a diagnosis of complicated pneumoconiosis. Employer's Brief at 21-22. We disagree. The ALJ accurately concluded

[6] The ALJ also considered the Miner's treatment record x-ray readings but found them to be silent regarding the presence or absence of pneumoconiosis. Decision and Order at 6. We affirm this finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

both physicians diagnosed complicated pneumoconiosis on the ILO x-ray forms. Both checked the box indicating Category A, complicated pneumoconiosis. Director's Exhibit 18 at 23; Claimant's Exhibit 1 at 1. That simple check -- barring some sort of clear indication it was made in error -- permits an ALJ to conclude a physician read the x-ray as positive for complicated pneumoconiosis, given the design of the ILO x-ray form and the Act's statutory and regulatory requirements. 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.102(d), 718.304.[7]

Contrary to Employer's assertion, the ALJ did not disregard the physicians' comments. Employer's Brief at 21-22. After noting Drs. Crum's and Alexander's diagnoses of complicated pneumoconiosis pursuant to the ILO criteria, the ALJ stated their comments did not diminish their conclusion that more likely than not the large opacity they identified was consistent with pneumoconiosis. Decision and Order at 6. He thus evaluated their statements with the rest of the ILO x-ray form and rendered his findings, which he is authorized to do. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). The ALJ having done a qualitative review of all the relevant evidence and determined the majority of equally-qualified readers diagnosed complicated pneumoconiosis, we affirm the ALJ's finding that the x-rays establish complicated pneumoconiosis. *See Gray*, 176 F.3d at 388-89; *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993).

Other Evidence (The Miner's Treatment Records[8] and Medical Opinions)

The ALJ considered the medical opinions of Drs. Majmudar, Istanbouly, Tuteur and Adcock. 20 C.F.R. §718.304(c). Drs. Majmudar and Istanbouly diagnosed complicated

[7] For more than fifty years, the ILO has published guidelines for the classification of chest x-rays of pneumoconiosis. The classification system seeks to codify x-ray abnormalities of pneumoconioses in a simple, reproducible manner. *See* INTERNATIONAL LABOR OFFICE, GUIDELINES FOR THE USE OF THE ILO INTERNATIONAL CLASSIFICATION OF RADIOGRAPHS OF PNEUMOCONIOSES (2000) at 1. In claims for black lung benefits, pneumoconiosis may be established with a chest x-ray "classified as Category 1, 2, 3, A, B, or C, according to the ILO classification system[.]" 20 C.F.R. §718.102(d). Categories 1, 2, and 3 indicate simple pneumoconiosis; categories A, B, and C indicate complicated pneumoconiosis. 20 C.F.R. §718.304.

[8] Employer raises no specific challenge to the ALJ's findings that the Miner's treatment records, including treatment x-rays and CT scans, neither support nor refute a

pneumoconiosis. Director's Exhibit 18 at 5-6; Claimant's Exhibit 5 at 1-3. Dr. Tuteur opined the Miner had lung cancer, not complicated pneumoconiosis, explaining the CT scans showed a large opacity that diminished with cancer treatment in October 2019 and subsequently fully resolved. Employer's Exhibits 1 at 5-6, 6 at 16-17. Dr. Adcock opined the Miner's October 17, 2019, October 24, 2019, and January 25, 2021 CT scans showed resolution of acute histoplasmosis rather than complicated pneumoconiosis. Employer's Exhibit 2 at 1.

The ALJ found Dr. Majmudar's complicated pneumoconiosis diagnosis was merely a restatement of Dr. Crum's interpretation of the August 14, 2020 x-ray, and he found Dr. Majmudar's opinion entitled to little weight. Decision and Order at 8. In addition, the ALJ found Dr. Istanbouly's opinion not well-reasoned for failing to identify the objective basis for his opinion. *Id.* at 9. Further finding the opinions of Drs. Tuteur and Adcock unsupported and unpersuasive, the ALJ found the other evidence considered under Section 718.304(c) neither refutes nor establishes the presence of complicated pneumoconiosis. *Id.* at 9-11. Considering the record as a whole, the ALJ found the x-ray evidence entitled to controlling weight and therefore Claimant proved the Miner had complicated pneumoconiosis by a preponderance of evidence. *Id.* at 12.

Employer asserts the ALJ erred in finding the opinions of Drs. Tuteur and Adcock unpersuasive. We disagree. The ALJ found Dr. Tuteur's conclusion, that the Miner's October 24, 2019 CT scan shows his large opacity had diminished due to his cancer treatment is inaccurate, as the Miner's treatment records show he did not begin cancer treatment until mid-November 2019.[9] Decision and Order at 10 (citing Employer's Exhibit 6 at 16-17). Substantial evidence supports this finding. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005). The ALJ also found Dr. Tuteur's conclusion that the "2022 Adcock [CT scan] review" establishes the opacity fully resolved is predicated on extra-record evidence as the record contains no such 2022 CT scan review by Dr.

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finding of complicated pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 6-8.

[9] The ALJ accurately observed: the Miner's October 17, 2019 treatment CT scan without contrast indicated a 4 cm opacity; his October 24, 2019 treatment CT scan with contrast indicated a 3.2 cm opacity; and his chemotherapy for lung cancer began the week of November 11, 2019, which postdates both CT scans that Dr. Tuteur indicated as reflecting a diminishing opacity size due to cancer treatment. Decision and Order at 11; Claimant's Exhibits 2 at 31, 34; 4 at 2, 94.

Adcock.[10] Decision and Order at 10-12. Employer does not challenge this finding. *See Skrack*, 6 BLR at 1-711. Because opinions premised on inaccurate factual assumptions or extra-record evidence may be accorded diminished weight, the ALJ permissibly found Dr. Tuteur's opinion unpersuasive. *See Martin*, 400 F.3d at 305; *Harris v. Old Ben Coal Co*., 23 BLR 1-98, 1-108 (2006) (en banc).

Similarly, the ALJ permissibly found Dr. Adcock's opinion that the Miner's CT scans reflected acute histoplasmosis rather than complicated pneumoconiosis unpersuasive because the record contains no evidence that the Miner ever had or was treated for histoplasmosis. Decision and Order at 9; *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 478 (6th Cir. 2011); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989). Although Employer asserts Dr. Adcock's opinion is consistent with Dr. Tuteur's consideration of histoplasmosis as an alternative explanation for the resolution of the Miner's large opacity, Employer fails to acknowledge the ALJ found Dr. Tuteur's opinion unreasoned on this point. Employer's Brief at 22 (unpaginated) (citing Employer's Exhibit 1 at 6); *see Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"). As the ALJ provided valid reasons for finding the medical opinions of Drs. Tuteur and Adcock unpersuasive and Employer raises no other challenge to the ALJ's weighing of the relevant evidence, we affirm the ALJ's findings that the other evidence does not refute a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(c) and that Claimant established complicated pneumoconiosis on the record as a whole.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

Attorney Fee Award: District Director

Subsequent to the issuance of the ALJ's Decision and Order Awarding Benefits, Claimant's counsel (Counsel) submitted an itemized fee petition on October 30, 2024, requesting a fee for legal services performed before the district director from March 10, 2020 to April 12, 2021. Counsel requested attorney fees in the amount of $7,202.50 for

[10] The ALJ accurately observed Dr. Tuteur explained in his deposition that the Miner's "mass 'became smaller and then at the time of the 2022 Adcock review it was – had resolved, so this is an example of response to specific cancer treatment.'" Decision and Order at 10 (quoting Employer's Exhibit 6 at 17). Additionally, the ALJ noted "[u]nlike Dr. Tuteur's description of Dr. Adcock's readings of the 2019 CT scans, Dr. Tuteur did not adequately identify, describe, or summarize the '2022 Adcock review.'" *Id.* n.29.

39.25 total hours of legal services, representing: $2,846.25 for 17.25 hours of legal services performed by legal assistant Sarah Agnew at an hourly rate of $165.00; $100.00 for 1 hour of legal services performed by legal assistant Kayleigh Cleveland at an hourly rate of $100.00; $660.00 for 6 hours of legal services performed by legal assistant Lauren Ellis at an hourly rate of $110.00; $700.00 for 5 hours of legal services performed by paralegal Leslie Jackson at an hourly rate of $140.00; $675.00 for 3 hours of legal services performed by attorney David Littrell at an hourly rate of $325.00; $27.50 for 0.25 hour of legal services performed by legal assistant Linda Totten at an hourly rate of $110.00; and $2,193.75 for 6.75 hours of legal services performed by attorney Austin Vowels at an hourly rate of $325.00.[11] Employer objected to various itemized entries and challenged the requested hourly rates for Attorney Vowels and Legal Assistant Agnew. Counsel replied and also requested additional fees of $406.25, representing 1.25 hours of Attorney Vowels's time defending Counsel's fee petition at an hourly rate of $325.00.

The claims examiner disallowed all time billed for services rendered before the ALJ between April 12, 2021 and August 14, 2024, and found the remainder of Counsel's fee application sought $4,227.50 for 21.5 hours of services rendered at the district director level.[12] She reduced the requested hourly rates for Attorney Vowels and Legal Assistant Agnew to $300.00 and $100.00, respectively. Supplemental Fee Award at 4 (unpaginated).

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[11] Counsel's fee application misstates the total itemized entries as reflecting a total of $6,633.75 for 37.5 hours of itemized legal services. Review of Counsel's fee application reflects Attorney Vowels actually itemized 6.75, rather than 5, hours of attorney services as stated in Counsel's fee application. It thus totals 39.25 hours of itemized services and a charge of $7,202.50.

[12] The claim's examiner's statement reflects a clear mathematical error. After accounting for all 12.25 hours of itemized entries for services rendered before the ALJ between April 12, 2021 and August 14, 2024, that the claims examiner disallowed, Counsel's fee petition and supplemental fee petition sought $5,346.25 for 28.25 hours of services rendered before the district director, representing 17.25 hours ($2,846.25) of Legal Assistant Agnew's time, 5 hours ($550.00) of Legal Assistant Ellis's time, and 6 hours ($1,950.00) of Attorney Vowels's time.

The claims examiner did not specifically identify which itemized entries she omitted. However, based on the dates that she specified she was denying services for, she apparently denied all itemized services performed by Kayleigh Cleveland, Leslie Jackson, and Linda Totten, and one hour of itemized services performed by Lauren Ellis because they were rendered while the case was pending before the ALJ between April 12, 2021 and August 14, 2024.

Further striking, without explanation, 5.25 hours of Legal Assistant Agnew's time,[13] the district director awarded $2,350.00 in fees for 15 hours of services performed.[14] *Id.* at 4-5.

Counsel argues the claims examiner erred in: reducing the hourly rates of Attorney Vowels and Legal Assistant Agnew; finding Counsel requested fees for only 15 hours of services after subtracting the specified disallowed time; failing to explain why she struck fees for Legal Assistant Agnew's services performed between November 9, 2020 and January 8, 2021; failing to award fees for services rendered on the survivor's claim before the district director while the miner's claim was pending before the ALJ; and failing to address the request for fees for defending the fee application in response to Employer's objections. Claimant's Petition for Review at 3-16. Employer responds in support of the fee award. The Director did not file a substantive response. Counsel replied, reiterating his contentions on appeal.

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. *See 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). 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 Bentley*, 522 F.3d at 663.

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[13] The claims examiner summarily stated the following entries for legal assistant Sarah Agnew were "stricken": 0.75 hour on November 9, 2020, for "Review of file, preparation of HITECH Medical Release Forms"; 0.25 hour on January 8, 2021, for "telephone conference with miner, preparation of status update memorandum; 3.5 hours on January 19, 2021, for "Review of file, preparation of letter to complete Fiduciary information"; 0.5 hour on January 20, 2021, for "Telephone conference re: Guardian life insurance plans"; and 0.25 hour on January 21, 2021, for "Telephone conference with On Time Heating and Cooling." Supplemental Fee Award at 5 (unpaginated); District Director Fee Request at 18-19.

[14] The claims examiner stated only that the $2,350.00 sum reflected "15 hours of services at a rate of $300.00 per hour." Supplemental Fee Award at 5 (unpaginated). This statement reflects a mathematical error -- 15 hours x $300/hour = $4,500.

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 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).

A reasonable hourly rate is "to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). The market rate is "the rate that lawyers of comparable skill and experience can reasonably expect to command within the venue of the court of record." *Geier v. Sundquist*, 372 F.3d 784, 791 (6th Cir. 2004); *see Bentley*, 522 F.3d at 663. 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; *Gonter v. Hunt Valve Co.*, 510 F.3d 610, 617 (6th Cir. 2007). Evidence of fees received in other black lung cases may be an appropriate consideration in establishing a market rate. *See Bentley*, 522 F.3d at 664.

In this case, Counsel requested hourly rates of $325.00 for Attorney Vowels's services and $165.00 for Legal Assistant Agnew's services. In support of Attorney Vowels's rate, Counsel noted he began requesting $325.00 per hour in late 2021 due to inflation; cited a 2024 case before the Office of Administrative Law Judges as an example in which he was awarded an hourly rate of $325.00; cited additional cases in which other attorneys were awarded over $325 per hour; and referenced: 1) market research, 2) the USAO Attorney's Fee Matrix, 3) the 2017-2018 United States Consumer Law Attorney Fee Survey Report, and 4) Consumer Price Index calculations to adjust for inflation. Fee Petition at 6-9; *Jefferson v. Ziegler Coal*, OALJ Case No. 2011-BLA-05932 (May 31, 2024).

To support Legal Assistant Agnew's requested hourly rate, Counsel noted she was an administrative assistant for twelve years before joining Counsel's firm in January 2019, where she works on black lung claims and customarily bills between $75.00 and $165.00 per hour. Fee Petition at 14-15. Counsel requested the higher rate because Legal Assistant Agnew has become more experienced and has specialized training, and because of inflation. *Id*.

The claims examiner noted this was a "routine case which did not call for special ability and effort," and the approved hourly rates of $300.00 for Attorney Vowels and $100.00 for Legal Assistant Agnew are "comparable to that being charged by other highly qualified attorneys within the same geographical location who also have considerable expertise in the handling of Federal Black Lung claims." Supplemental Fee Award at 4 (unpaginated). But the claims examiner did not discuss Counsel's arguments or evidence supporting his requested hourly rates and did not provide sufficient reasoning to support her rate reduction. Her determination to reduce the requested hourly rates for Attorney Vowels and Legal Assistant Agnew is therefore arbitrary. *See Keith v. General Dynamics Corp.*, 13 BRBS 404, 406-07 (1981); *Cabral v. General Dynamics Corp.*, 13 BRBS 97, 99-100 (1981); *Marcum v. Director, OWCP*, 2 BLR 1-894, 1-897 (1980). We thus vacate her findings that hourly rates of $300.00 and $100.00 reflect market rates for Attorney Vowels's and Legal Assistant Agnew's respective services. *See Bentley*, 522 F.3d at 664-65.

Number of Hours Requested and Awarded

Counsel requested compensation for a total of 40.5 hours of legal services. Fee Petition at 1-2; Reply to Response to Fee Petition at 7. The claims examiner disallowed 17.5 hours of requested services, consisting of 12.25 hours billed between April 12, 2021 and August 14, 2024, which she characterized as services rendered while the miner's claim was pending before the ALJ, and 5.25 hours of Legal Assistant Agnew's time that she summarily "struck." Supplemental Fee Award at 4-5 (unpaginated). After these exclusions, Counsel's remaining fee petition reflects 23.25 hours of itemized services (40.5 hours – 17.25 hours = 23.25 hours) rendered before the district director.

Despite this, the claims examiner awarded fees for only 15 hours of services, without identifying any additional entries that were disallowed or explaining how she arrived at this figure. Supplemental Fee Award at 4-5 (unpaginated). Because the claims examiner neither reconciled the awarded hours with Counsel's remaining itemized entries nor identified which additional time was denied, her decision does not allow for meaningful appellate review. We therefore vacate the award for 15 hours of services as insufficiently explained. *See Keith*, 13 BRBS at 406-07; *Cabral*, 13 BRBS at 99-100; *Marcum*, 2 BLR at 1-897.

We further agree with Counsel that the claims examiner abused her discretion in striking 5.25 hours of Legal Assistant Agnew's time without explanation. The claims examiner identified the dates and descriptions of the stricken entries but provided no rationale for finding these services non-compensable under 20 C.F.R. §725.366. *Keith*, 13 BRBS at 406-07; *Cabral*, 13 BRBS at 99-100; *Marcum*, 2 BLR at 1-897. Accordingly, we vacate her decision to disallow these entries.

Finally, although the claims examiner may not award fees for services rendered before the ALJ, Counsel asserts some of the time disallowed as services rendered before the ALJ between April 12, 2021 and August 14, 2024, actually reflects services rendered in the survivor's claim at the district director level. Claimant's Brief at 16. The claims examiner disallowed all 12.25 hours of requested time during this period. Because the claims examiner did not consider whether the requested time reflects services before the district director in the survivor's claim, we vacate her determination to disallow all services billed during this period as work performed before the ALJ. *See Keith*, 13 BRBS at 406-07; *Cabral*, 13 BRBS at 99-100; *Marcum*, 2 BLR at 1-897.

Remand Instructions

On remand, the claims examiner must reconsider the requested hourly rates of Attorney Vowels and Legal Assistant Agnew, taking into account the documentation supplied in the fee petition and Counsel's arguments in support of the requested rates. The claims examiner must also reconsider Counsel's request for all 40.5 hours of services requested and provide an explanation for any entries determined to be non-compensable. *See Bentley*, 522 F.3d at 664-65; *Keith*, 13 BRBS at 406-07; *Cabral*, 13 BRBS at 99-100; *Marcum*, 2 BLR at 1-897. In doing so, the claims examiner must consider whether any itemized entries reflect fees for services rendered in the survivor's claim at the district director level. Further, she must specify which time entries she allows or disallows and explain her findings; she may not reduce the number of compensable hours by unexplained arithmetic or generalized statements regarding the nature of the case.

Accordingly, we vacate the claims examiner's Supplemental Fee Award and remand this case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge