



BRB No. 25-0127 BLA

CURTIS D. KELLER

v.

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

Respondent

) **NOT-PUBLISHED**  
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) DATE ISSUED: 03/23/2026  
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) **DECISION and ORDER**  
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Appeal of the Attorney Fee Order of Patricia J. Daum, Administrative Law  
Judge, United States Department of Labor.

Samuel B. Petsonk (Petsonk LLP), Beckley, West Virginia, for Claimant.

Ann Marie Scarpino (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: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant's counsel (Counsel), Samuel B. Petsonk, appeals the Attorney Fee Order  
(2024-BLA-05137) of Administrative Law Judge (ALJ) Patricia J. Daum rendered on an  
attorney's fee petition filed pursuant to the Black Lung Benefits Act, as amended,  
30 U.S.C. §§901-944 (2012) (the Act).

On August 9, 2024, Counsel filed an amended fee application. Counsel requested  
\$4,600.00 in attorney's fees and \$2,000.00 in expenses; he provided itemized lists of his  
time entries, references to six attorney fee awards by the district director and one attorney

fee award before the Office of Administrative Law Judges (OALJ), and an invoice for and a copy of an unreimbursed medical report. Counsel identified his customary billing rate as \$400.00 per hour.

On December 6, 2024, the ALJ issued an Attorney Fee Order. After consideration of Counsel's fee petition, experience, quality of representation, and the complexity of the case, the ALJ reduced Counsel's hourly rate to \$275.00. The ALJ also disallowed entries for 0.75 hour of services as routine, clerical, or insufficiently descriptive. She further found Claimant entitled to reimbursement for costs of \$2,000.00. The ALJ thus found Counsel entitled to \$2,956.25 in attorney's fees and \$2,000.00 in expenses.<sup>1</sup>

On appeal, Counsel contends the ALJ erred in finding he failed to support his requested hourly rate of \$400.00 per hour and in reducing his time entries by 0.75 hour. The Director, Office of Workers' Compensation Programs (the Director), responds in support of the ALJ's reduction of Counsel's hourly rate.<sup>2</sup>

The amount of an attorney's fee award is discretionary and will be upheld on appeal unless the challenging party shows it to be arbitrary, capricious, based on an abuse of discretion, or not in accordance with applicable law.<sup>3</sup> See *Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 955 (9th Cir. 2007); *Zeigler Coal Co. v. Director, OWCP [Hawker]*, 326 F.3d 894, 902 (7th Cir. 2003); *Jones v. Badger Coal Co.*, 21 BLR 1-102, 1-108 (1998) (en banc).

### **Reasonable Hourly Rate**

When an attorney prevails 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

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<sup>1</sup> We affirm, as unchallenged on appeal, the ALJ's award of \$2,000.00 in expenses. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Attorney Fee Award at 8.

<sup>2</sup> The Director's response did not address Counsel's challenge to the reduction of his time entries. See generally Director's Response Brief.

<sup>3</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit because Claimant performed his coal mine employment in Montana. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

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).<sup>4</sup> 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 *B & G Mining, Inc. v. Director, OWCP [Bentley]*, 522 F.3d 657, 663 (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; *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 an hourly rate of \$400.00. In support of this hourly rate, Counsel referenced six awards by the district director and one award for work before the OALJ. The ALJ determined the work in this case was routine, not legally or medically complex, and noted the original petition was submitted late and with deficiencies. Attorney Fee Order at 4-6. The ALJ noted that in three of the cases submitted by Counsel, where the district director awarded a \$400 hourly rate, Counsel’s hourly rate for work before the OALJ was awarded at \$275 an hour. *Id.* at 6. In consideration of those “temporally proximate” awards, the ALJ reduced Counsel’s hourly rate to \$275.00 per hour. *Id.*

Counsel contends the ALJ ignored market-rate evidence he submitted with his fee petition and erred in finding the rates awarded to Counsel for his work in other black lung

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<sup>4</sup> The ALJ cited *Wells v. Director, OWCP*, 9 BLR 1-63 (1986) for the broad proposition that contingent and stipulated fees are invalid. Attorney Fee Order at 3. While that is true, Section 725.365 states “[n]o contract or prior agreement for a fee shall be valid.” 20 C.F.R. §725.365. Thus, a close reading of *Wells* does not support a broad prohibition of all stipulated fee arrangements. Rather, it prohibits prior contingent or agreed upon fee arrangements between a claimant and their counsel. See *id.* Nevertheless, although not *per se* invalid under *Wells*, any stipulated or agreed upon hourly rates are not binding and must still be approved by the appropriate tribunal in the manner provided in the Act and its implementing regulations. 33 U.S.C. 928(a), (b), (e); see *Eifler v. Peabody Coal Co.*, 13 F.3d 236, 238 (7th Cir. 1993) (“an award of fees requires administrative or judicial approval even if the employer agrees with the claimant’s lawyer on the appropriate award”).

claims to be unpersuasive as to the reasonable market rate. Counsel's Fee Petition at 10-14. We disagree.

Counsel contends the ALJ failed to consider his affidavit setting forth that he charges fee-paying clients \$400 an hour for labor and employment litigation or Arthur Traynor's affidavit stating his personal knowledge that Counsel receives \$400 an hour from his clients for such work. Counsel's Brief at 8-9. But a review of the record does not disclose that Counsel included either affidavit as part of either his initial or amended fee petitions. Therefore, contrary to Counsel's vehement yet ill-chosen contentions, the ALJ did not overlook or "willfully ignore" the affidavits that were not submitted by Counsel.

Further, contrary to Counsel's contention, the ALJ reasonably determined the evidence Counsel submitted was insufficient to determine the prevailing rate in the relevant market. While prior fee awards can be used as evidence to support an attorney's hourly rate, "prior fee awards are not controlling authority establishing a prevailing market rate for later cases." *Gosnell*, 724 F.3d at 573. In arriving at her conclusion, the ALJ compared both the prior fee awards referenced by Counsel as well as others in which Counsel received a reduced rate, Counsel's experience, and the quality of his representation. The ALJ thus acted within her discretion and in accordance with applicable law in reducing Counsel's hourly rate to \$275.00.<sup>5</sup> *See generally Story v. Navy Exch. Serv. Ctr.*, 33 BRBS 111, 120 (1999); *see also Jones*, 21 BLR at 1-108; 20 C.F.R. §725.366.<sup>6</sup>

### **Time Entries**

The ALJ disallowed 0.75 hour from Counsel's time entries, disallowing three different 0.25 hour entries as routine clerical work or vague. Attorney Fee Order at 7. The ALJ noted Counsel included numerous 0.25 hour entries for receiving and reviewing documents regardless of the length of the document. *Id.* The ALJ reasoned that Counsel repeatedly billing for receiving and reviewing documents while charging the same nominal

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<sup>5</sup> Because the ALJ acted within her discretion to consider the quality of representation, Counsel's experience, and prior fee awards in determining a reasonable hourly rate, 20 C.F.R. §725.366(b), and Counsel raises no further arguments on this point, we need not address the ALJ's additional citation to lack of complexity of the issues. *See* 20 C.F.R. §802.211(b).

<sup>6</sup> Counsel further argues that the fact that employers have agreed to pay Counsel's rate of \$400.00 per hour demonstrates his rates have long been established as reasonable in the relevant market. Counsel's Brief at 16. However, an agreement between parties is not binding on the ALJ for the purposes of establishing a reasonable hourly rate. *See Eifler*, 13 F.3d at 238.

fee regardless of their lengths led her to conclude such work is likely a routine clerical task, such as filing; nor, she noted, do such repetitive, vague entries establish the necessity of the task. *Id.* Specifically, the ALJ noted Counsel billed the same amount of time, 0.25 hours, to “receive and review” a 607-page document as he did to “receive and review” a single page Notice of Appeal. Attorney Fee Order at 7. Thus, she disallowed the January 25, 2024 entry as an “[e]xcessive charge to review a routine one page letter,” the April 25, 2024 entry as an “[e]xcessive charge to review a routine scheduling letter,” and the April 26, 2024 entry as “[v]ague, unable to establish necessity.” *Id.* Counsel argues these entries were necessary as part of pursuit of Claimant’s claim. Counsel’s Brief at 16-18. Thus, he contends the ALJ’s reduction of this time was arbitrary. *Id.*

Services are compensable if the amount of time is not excessive and if, at the time the work was performed, counsel reasonably regarded it as necessary to establish Claimant’s entitlement. *See Lanning v. Director, OWCP*, 7 BLR 1-314, 1-316 (1984). The ALJ reduced the time entries because she reasonably found that they were clerical, excessive, and/or unnecessary. Attorney Fee Order at 7. The ALJ reviewed Counsel’s requests, carefully considered whether the time entries were reasonable, and explained her findings. Counsel has failed to show how the ALJ abused her discretion in finding these tasks clerical, excessive, and/or unnecessary, and thus we affirm the ALJ’s disallowing this 0.75 hour. *See Hawker*, 326 F.3d at 903; *Lanning*, 7 BLR at 1-317 (ALJ has broad discretion to determine reasonableness of time entries); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316 (4th Cir. 2012) (ALJ’s duty to explain is satisfied as long as a reviewing court can discern what the ALJ did and why he did it).

ALJs are afforded “broad deference” in determining whether the number of billable hours is reasonable in relation to the work performed because “they are in a much better position than the appellate court to make these determinations.” *Bentley*, 522 F.3d at 666-67. Because Counsel has not demonstrated the ALJ abused her discretion, we affirm the ALJ’s finding that 10.75 hours of Counsel’s time is compensable, while 0.75 hour is not. 20 C.F.R. §725.366; *see Bentley*, 522 F.3d at 667; *Lanning*, 7 BLR at 1-317. As Counsel raises no further challenges to the ALJ’s attorney fee award and as we are more persuaded by supported legal arguments than by unsupported attacks, we affirm the award of \$2,956.25 in fees and \$2,000.00 in costs in this claim.

Accordingly, we affirm the ALJ's Attorney Fee Order.

SO ORDERED.

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

GLENN E. ULMER  
Administrative Appeals Judge