

U.S. Department of Labor

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



BRB No. 22-0488 BLA

PAUL JONES)

Claimant-Respondent)

v.)

THE MARSHALL COUNTY COAL)
COMPANY)

and)

MURRAY ENERGY CORPORATION)
TRUST)

Employer/Carrier-)
Petitioners)

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

Party-in-Interest)

DATE ISSUED: 5/18/2023

DECISION and ORDER

Appeal of the Order Awarding Attorney Fees of Steven D. Bell,
Administrative Law Judge, United States Department of Labor.

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for
Employer and its Carrier.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and
BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Steven D. Bell's Order Awarding Attorney Fees (2020-BLA-05604) granting Claimant's counsel fees and expenses, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The amount of an ALJ's attorney 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 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).

On February 23, 2022, the ALJ issued a Decision and Order Awarding Benefits. Thereafter, Claimant's counsel, John C. Ellis, submitted a fee petition to the ALJ requesting \$6,110.00 for legal services rendered and \$343.17 in expenses. Employer did not object to the fee petition. The ALJ found the requested fee and expenses to be reasonable and approved them in full on July 7, 2022.

On appeal, Employer argues that the attorney fee award must be reversed if the Benefits Review Board reverses the ALJ's decision awarding benefits. Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

Employer appealed the underlying award of benefits to the Board. On May 8, 2023, the Board affirmed the ALJ's Decision and Order Awarding Benefits. *Jones v. Marshall Cnty. Coal Co.*, BRB No. 22-0239 BLA (May 8, 2023) (unpub.).¹ We thus reject Employer's argument and affirm the ALJ's award of fees and expenses to Mr. Ellis.

¹ Although Employer's appeal of the Order Awarding Attorney Fees requests that it be consolidated with its appeal of the Decision and Order Awarding Benefits, Employer did not file a separate motion to consolidate these appeals. Employer's Brief at 5. The regulations require that "[a] motion shall be a separate document and shall not be incorporated in the text of any other paper filed with the Board, except for a statement in support of the motion." 20 C.F.R. §802.219(b). If a party attempting to file a motion does not comply with this paragraph, "the Board will not consider and dispose of the motion." *Id.* Therefore, these appeals were not consolidated.

Accordingly, we affirm the ALJ's Order Awarding Attorney Fees.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge