



BRB No. 25-0044 BLA

JASON GRIFFITH

Claimant-Petitioner

v.

POCAHONTAS COAL COMPANY, LLC

and

BRICKSTREET MUTUAL INSURANCE
COMPANY

Employer/Carrier-
Respondents

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 09/09/2025

DECISION and ORDER

Appeal of the Attorney Fee Order of Sean M. Ramaley, Administrative Law
Judge, United States Department of Labor.

Samuel B. Petsonk (Petsonk PLLC), Beckley, West Virginia, 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 the Attorney Fee Order (2024-BLA-05083)
of Administrative Law Judge (ALJ) Sean M. Ramaley issued in connection with the

successful prosecution of a miner's claim filed on June 15, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

On July 24, 2024, Employer and its Carrier (Employer) withdrew controversion of all issues in this case and moved to remand this case to the district director for issuance of a payment order. On July 29, 2024, the ALJ granted Employer's motion, cancelled the formal hearing, and remanded the case to the district director to issue an appropriate payment order. Order Granting Employer's Motion to Remand and Order Cancelling Hearing at 1.

On October 3, 2024, Counsel filed a Stipulated Fee Application, advising the ALJ that Employer agreed to pay a total fee of \$6,006.31 for services rendered and expenses incurred before the district director and the Office of Administrative Law Judges (OALJ) in this case. On October 4, 2024, the ALJ found Counsel's Stipulated Fee Application failed to comply with the requirements of 20 C.F.R. §725.366(a) that Counsel serve the fee application upon Claimant and provide a "complete statement of the extent and character of the necessary work done."¹ Thus he ordered Counsel to submit a fee application in accordance with the regulatory requirements. Order Directing Claimant's Counsel to Submit a Fee Application Consistent with 20 C.F.R. §725.366.

On October 4, 2024, Counsel filed a Motion to Approve Stipulated Fees and Expenses (Attorney Fee Motion). He requested a discounted lump-sum total fee of \$6,006.31 for services performed and expenses incurred before the district director and ALJ including: fees totaling \$5,400 for 13.5 hours of legal services performed before the district director at an hourly rate of \$400, \$1,200 for 3.0 hours of legal services performed before the ALJ at the same hourly rate, and \$6.31 in expenses incurred before the district director. Counsel attached a certificate of service verifying he served Claimant with a copy of his fee application.

In the resulting fee order, the ALJ reduced Counsel's requested hourly rate to \$275 and disallowed 15.0 hours of itemized time and \$6.31 in expenses. Thus he awarded a total fee of \$481.25 for 1.75 hours of legal services at an hourly rate of \$275.

¹ The ALJ observed Counsel misrepresented the character of the necessary work done in stating that he participated in the hearing, development of evidence, and filing of a Closing Brief. The ALJ noted "this claim did not proceed to a hearing, no evidence was filed, and no closing briefs were submitted." Attorney Fee Order at 1.

On appeal, Counsel challenges the ALJ's reduction of his hourly rate.² 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.³ See *E. Assoc. Coal Corp. v. Director, OWCP* [*Gosnell*], 724 F.3d 561, 568-69 (4th Cir. 2013); *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). The regulations provide that an approved fee must account for "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," along with any other information that "may be relevant to the amount of the fee requested." 20 C.F.R. §725.366(b). The party seeking an attorney's fee has the burden to establish that the claimed rate is reasonable and the hours expended were necessary in the underlying claim. *Gosnell*, 724 F.3d at 569 (starting point for calculating a reasonable attorney's fee is the "lodestar" method, under which a "reasonable hourly rate" is multiplied by "the number of hours reasonably expended on the litigation") (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

Counsel argues the ALJ failed to weigh the evidence and adequately explain his decision to reduce the requested \$400 hourly rate. Petitioner's Brief at 7-13. We agree.

To support his rate, Counsel submitted five 2023-2024 fee orders awarding him a \$400 hourly rate – four by district directors and one by an ALJ.⁴ Petitioner's Brief at 10. In addressing the reasonableness of Counsel's requested rate, the ALJ summarily stated:

² We affirm, as unchallenged on appeal, the ALJ's disallowance of 15.0 hours of itemized time and \$6.31 in expenses. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Attorney Fee Order at 2-3.

³ The Benefits Review Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

⁴ The prior fee awards include *Martin v. E. Assoc. Coal Co.*, OALJ Case No. 2021-BLA-05156 (Supp. Decision and Order Granting in Part and Denying in Part Attorney's Fees) (Aug. 21, 2023); *In the Matter of Carrell P. McMillion*, OWCP Case No. 22LNZ-2021320 (Proposed Order Supplemental Award Fee for Legal Services) (Jan. 31, 2024); *In the Matter of Johnny R. Goodwin*, OWCP Case No. 22BLF-2020017 (Proposed Order Supplemental Award Fee for Legal Services) (Dec. 29, 2023); *In the Matter of Ralph E.*

Claimant's Counsel has not met the required burden of establishing that the requested hourly rate of \$400.00 is in line with those prevailing in the Beckley, West Virginia community for similar services and levels of experience. While Mr. Petsonk has demonstrated several years of experience, he has failed to provide adequate support that the requested rate is reasonable and in line with those prevailing in the relevant community for similar services. Rather, I find the rate of \$275.00 per hour for Mr. Petsonk is commensurate with the quality of representation, his qualifications, and the complexity of the legal issues. This rate is indeed a "market-based" amount for this type of work.

Attorney Fee Order at 4 (emphasis in original). The ALJ did not address Counsel's prior fee awards as evidence of his market rate, nor provide any explanation why a rate that Employer agreed to pay is not further evidence of the market rate.

Although prior fee awards do not themselves *set* the market rate, they are "inferential evidence" of the prevailing rate. *See Gosnell*, 724 F.3d at 572. "[A]ll other things being equal, the most reliable indicator of prevailing market rates in a black lung case will be evidence of rates allowed in other black lung cases." *Id.* at 573. As the ALJ did not explain why Counsel's documented \$400 rates were not persuasive, particularly in light of Employer's stipulation, or what facts support \$275 as the prevailing rate, his decision does not comport with the Administrative Procedure Act (APA).⁵ 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand). We therefore vacate his hourly rate determination and overall fee award.

Lambert, OWCP Case No. B7QST-2022188 (Proposed Order Supplemental Award Fee for Legal Services) (Mar. 21, 2024); and *In the Matter of Larry Powers*, OWCP Case No. 2NF8K-2021210 (Proposed Order Supplemental Award Fee for Legal Services) (Apr. 10, 2024).

In his brief, Counsel cited affidavits from himself and another attorney and referenced an ALJ fee award in *Dawes v. BHP Minerals Int'l LLC*, OALJ Case No. 2021-BLA-05013 (Attorney Fee Award) (Jan. 3, 2025). However, these documents are not part of the record.

⁵ The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented" 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

On remand, the ALJ must reconsider whether Counsel has established \$400 is a reasonable market rate in the relevant community for his services. *See Gosnell*, 724 F.3d at 571; *Jones*, 21 BLR at 1-108. In doing so, the ALJ must explain his findings in accordance with the APA. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Lane Hollow Coal Co. v. Director, OWCP [Lockhart]*, 137 F.3d 799, 802-03 (4th Cir. 1998).

Accordingly, we affirm in part and vacate in part the ALJ's Attorney Fee Order and remand the case to the ALJ for further proceedings 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