

U.S. Department of Labor

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



BRB No. 24-0297

TAD HEFFLIN

Claimant-Petitioner

v.

VIGOR WORKS, LLC

and

SIGNAL MUTUAL INDEMNITY
ASSOCIATION, LIMITED

Employer/Carrier-
Respondents

NOT-PUBLISHED

DATE ISSUED: 08/07/2026

DECISION and ORDER

Appeal of the Order Granting Reconsideration, Vacating Attorney Fee Order Issued April 5, 2024, and Order Modifying Attorney Fee Order of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Charles Robinowitz (Law Office of Charles Robinowitz), Portland, Oregon, for Claimant.

James McCurdy (Lindsay Hart, LLP), Portland, Oregon, for Employer and its Carrier.

Before: GRESH, JONES, and ULMER, Administrative Appeals Judges.

JONES and ULMER, Administrative Appeals Judges:

Claimant appeals Administrative Law Judge (ALJ) Christopher Larsen's Order Granting Reconsideration, Vacating Attorney Fee Order Issued April 5, 2024, and Order

Modifying Attorney Fee Order (Order) (2020-LHC-00638) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act).¹ In cases arising under the jurisdiction of the United States Court of Appeals for the Ninth Circuit, the Benefits Review Board reviews an attorney's fee award "for errors of law and adherence to the substantial evidence standard."² *Seachris v. Brady-Hamilton Stevedore Co.*, 994 F.3d 1066, 1076 (9th Cir. 2021); *Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 952 (9th Cir. 2007); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272, 273 (1980). We "must accept the ALJ's findings unless they are contrary to law, irrational, or unsupported by substantial evidence."³ *Seachris*, 994 F.3d at 1076.

On November 14, 2019, Claimant filed a claim. On February 2, 2021, Employer and its Carrier (Employer) offered to settle the claim by paying Claimant \$9,969.19 and indicated medical expenses related to the claim would remain "open." Employer's Obj., Ex 2 at 1-2. Claimant rejected this offer. On May 11, 2021, Claimant and Employer entered into a settlement agreement, 33 U.S.C. §908(i), whereby Employer agreed to pay Claimant \$1,267.42 for medical treatment and transportation, \$5,657.31 for temporary total and temporary partial disability benefits, and \$5,277.06 "payable to U.S. Benefits for reimbursement" for its payment of disability benefits to Claimant while he was not working, totaling \$12,201.79. Employer's Obj., Ex 3 at 8. Employer also agreed to pay a

¹ The ALJ issued an Attorney Fee Order on April 5, 2024. However, pursuant to Employer's motion for reconsideration, the ALJ recognized he had ordered Employer to pay Claimant's counsel "\$25,2017.38" in fees and costs. Order at 1. On April 10, 2024, the ALJ issued the Order Granting Reconsideration, Vacating Attorney Fee Order Issued April 5, 2024, and Order Modifying Attorney Fee Order to reflect that Employer must pay Counsel \$25,207.38. *Id.* at 21. In all other respects, both orders are identical.

² This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit because Claimant sustained the injuries at issue in this case in Oregon. 33 U.S.C. §921(c); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff'd*, 300 F.3d 510 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. §702.201(a).

³ *But see Horton v. Director, OWCP*, No. 24-5011, 2026 WL 311571, at *3 (9th Cir. Feb. 5, 2026) (unpublished memorandum) (court reviews Benefits Review Board fee decisions for "abuse of discretion"); *Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1052 (9th Cir. 2009) (same).

reasonable attorney's fee and costs. *Id.* On May 11, 2021, ALJ Steven Berlin approved the proposed settlement agreement.⁴ Decision and Order Approving Settlement at 1.

On June 23, 2021, Claimant's counsel (Counsel) filed a fee petition requesting a total fee of \$32,330.25 and \$244.35 in costs.⁵ Decl. of Att'y Fees and Costs at 6. Employer objected to the requested hourly rates and certain time entries. Employer's Obj. at 1-7. Counsel responded to Employer's objections and filed a supplemental fee request of \$3,206.25 for 4.75 hours of work at an hourly rate of \$675 for that work. Decl. in Support of Supplemental Att'y Fees.

On April 10, 2024, the ALJ awarded Counsel \$24,963.03 for an attorney's fee and \$244.35 for costs. Order at 20-21. Initially, the ALJ found Counsel is entitled to a fee for his work under Section 28(b), 33 U.S.C. §928(b), because he procured combined benefits totaling \$12,201.79, which was greater than Employer's initial settlement offer. Order at 3-4. Further, the ALJ determined Portland, Oregon, was the relevant community for determining Counsel's hourly rate. *Id.* at 5. The ALJ rejected Counsel's requested \$675 hourly rate and awarded him an adjusted hourly rate of \$511, based on an average of the 2017 Oregon State Bar (OSB) Survey's hourly rates at the 75th percentile in Portland for plaintiff civil litigation attorneys, both personal injury and non-personal injury, the hourly rates for all private practice attorneys with more than thirty years of experience, and the rates for attorneys in the same category without regard to their experience, and the 2016 rates in the 2020 Morones Survey of Commercial Litigation Fees in Portland (Morones Survey).⁶ *Id.* at 5-14. In addition, the ALJ awarded \$200 per hour for work performed by Ms. Duncan, \$165 per hour for work performed by Ms. Gridley, and \$150 per hour for work performed by Ms. Gauthier. *Id.* at 20.

⁴ While the attorney fee issue was pending, ALJ Berlin retired, and the Office of Administrative Law Judges (OALJ) reassigned the case to the ALJ.

⁵ Counsel requested \$31,374 for 46.48 hours of his legal services at an hourly rate of \$675; \$870 for 4.35 hours of legal assistant services performed by Elizabeth Duncan at an hourly rate of \$200; \$41.25 for 0.25 hour of legal assistant services performed by Diane Gridley at an hourly rate of \$165; and \$45 for 0.3 hour of legal assistant services performed by LeeAnn Gauthier at an hourly rate of \$150. Decl. of Att'y Fees and Costs at 6.

⁶ The ALJ recognized the OSB Survey only included rates "as recent as 2016," while this case was litigated in 2020 and 2021. Order at 14. Using the United States Department of Labor's Bureau of Labor Statistics Inflation Calculator, the ALJ adjusted the 2016 hourly rate of \$442.50 to a December 2021 rate of \$511. *Id.* at 14 n.17.

The ALJ next considered the reasonableness and necessity of the work performed. *Id.* at 15-20. He agreed with Employer's objections that some of Counsel's time entries were clerical and reduced Counsel's total time entries from 46.48 hours in his initial fee petition to 42.23 hours. *Id.* Based on the total hours reflected across Counsel's initial and supplemental petitions, the ALJ awarded 46.98 hours for Counsel's work, 4.35 hours for Ms. Duncan's work, .25 hour for Ms. Gridley's work, and .3 hour for Ms. Gauthier's work. *Id.* at 18-20.

On appeal, Counsel contends the ALJ erred in determining his hourly rate, in reducing certain time entries of his as clerical, and in failing to issue a delay enhancement to 2024 hourly rates.⁷ Employer responds in support of the ALJ's fee order. Counsel filed a reply, reiterating his arguments on appeal.

Hourly Rate

Under the Act, a reasonable hourly rate is to be calculated according to the prevailing market rate "for similar services by lawyers of reasonably comparable skill, experience, and reputation" in the relevant community and should be commensurate with fees attorneys could obtain in other types of cases. *Seachris*, 994 F.3d at 1076-1077 (quoting *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984)); *Shirrod v. Director, OWCP*, 809 F.3d 1082, 1086 (9th Cir. 2015); *Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1053 (9th Cir. 2009). The fee applicant bears the burden of producing "satisfactory evidence" of the relevant market and the rates charged in that market. *Christensen*, 557 F.3d at 1053; *see also Blum*, 465 U.S. at 895 n.11. In awarding a reasonable attorney's fee, the adjudicator must consider all relevant rate evidence before him, *H.S. [Sherman] v. Dep't of Army/NAF*, 43 BRBS 41, 44 (2009), and must explain his rationale for assessing the fee. *Carter v. Caleb Brett, LLC*, 757 F.3d 866, 869 (9th Cir. 2014); *Jensen v. Weeks Marine, Inc.*, 33 BRBS 97, 101 (1999).

Counsel asserts the ALJ erred in calculating his proxy hourly rate because the ALJ "diluted" the rate by "using lower rates for non-comparable attorneys as part of the fee determination." Claimant's Br. at 3-5; Claimant's Reply at 2. He argues the ALJ had no basis for including the rates of all Portland private practice attorneys with far less experience than he and personal injury and non-personal injury plaintiff civil-litigation attorneys without regard to years of experience. Claimant's Br. at 3-5; Claimant's Reply at 2-3. As "other reasons" for challenging the ALJ's fee award, he asserts the ALJ provided

⁷ We affirm, as unchallenged on appeal, the ALJ's awarded hourly rates and hours worked for Ms. Duncan, Gridley, and Gauthier and the ALJ's awarded costs. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); Order at 20.

“no basis” for giving “little or no weight” to an order he submitted from an Oregon trial judge awarding him a \$500 hourly rate, that *Shirrod* permitted use of appellate rates, that the ALJ should not have refused to consider his appellate hourly rate fee awards he submitted, and that *Seachris* permitted use of commercial litigation rates.⁸ Claimant’s Br. at 4-5. We reject Counsel’s latter arguments but find merit in part of his first one.

To arrive at a proxy rate, the ALJ averaged the rates for attorneys in the general private practice market and in specific practice areas in Portland, Oregon: \$495 (OSB Survey: hourly billing rate of attorneys in private practice with more than thirty years of experience); \$350 (OSB Survey: personal injury and non-personal injury plaintiff civil litigation); \$400 (OSB Survey: all private practice areas without regard to years of experience); and \$525 (Morones Survey: median rate in 2016 for commercial litigation attorneys with thirty or more years of experience), resulting in an hourly rate of \$442.50 in 2016, which he then adjusted for inflation to a 2021 hourly rate of \$511. Order at 13-14. We agree with Counsel that the ALJ did not adequately explain his use of the OSB Survey rate for all private practice attorneys regardless of their years of experience. Claimant’s Br. at 3-5.

While the ALJ has the discretion to determine the hourly rates at which an attorney should be compensated, he must fully consider all relevant evidence and provide specific explanations for his findings. *Seachris*, 994 F.3d at 1080; *Shirrod*, 809 F.3d at 1086; *Carter*, 757 F.3d at 869. There is no evidence in the record to suggest that Counsel is comparable to all private practice Portland attorneys in skills, experience, or reputation, without regard to years of practice. Order at 11-13. Rather, the record establishes, and the ALJ noted, that Counsel has more than fifty years of experience with “significant skill.” *Id.* at 8. Further, the ALJ did not adequately explain why the rate for all private practice Portland attorneys, without accounting for their experience, is relevant to his calculation when he also included the rate for the same category of attorneys with more than thirty years of experience. *Id.* at 12-13. Moreover, the ALJ’s reliance on this rate appears to be inconsistent with his subsequent statement that his finding was based specifically on Counsel’s “skills, expertise and experience, reputation, and performance.” *Id.* at 14. As the ALJ has not adequately explained the relevance of this category, which includes the lower hourly rates of less experienced attorneys, we cannot affirm the ALJ’s rate calculation which includes this category. *See Blum*, 465 U.S. at 895 n.11; *Seachris*, 994

⁸ We reject any assertion that the ALJ did not use commercial litigation rates. He stated he gave commercial litigation rates “some weight,” he used an average of the commercial litigation rates, and Counsel acknowledged the ALJ “used the hourly rate for Portland commercial litigators with over 30 years of experience” in his calculation. Order at 11, 14; Claimant’s Br. at 3.

F.3d at 1078, 1080; *Carter*, 757 F.3d at 869; *Sherman*, 43 BRBS at 44; *Jensen*, 33 BRBS at 101; Order at 13.

However, we are not persuaded by Counsel's contention that the ALJ erred in relying on the OSB Survey rates for personal injury and non-personal injury plaintiff civil-litigation attorneys. Claimant's Br. at 3-5; Claimant's Reply at 2. While the OSB Survey does not divide these practice areas by years of experience, the ALJ reasonably found them relevant and comparable based on Counsel's description of his work. See *Christensen v. Stevedoring Servs. of Am.*, 43 BRBS 145, 146 (2009) (plaintiff personal injury civil litigation and plaintiff general civil litigation are "similar" markets for Counsel's services), *and modified on other grounds on recon.*, 44 BRBS 39, 40, *recon. denied*, 44 BRBS 75 (2010), *aff'd sub. nom.*, *Stevedoring Servs. of Am., Inc. v. Director, OWCP [Christensen]*, 445 F. App'x 912, 914 (9th Cir. 2011) (no abuse of discretion in the Board's using average rates of "general civil litigation" attorneys from OSB Survey); Order at 7-8, 12; Decl. of Att'y Fees and Costs at 7-8. Therefore, we reject Counsel's argument to remove this category.

We also reject any argument that the ALJ is not permitted to use the same percentile in all categories he included in the calculation because those groups already have lower rates and the ALJ merely diluted the higher commercial litigation and 30-plus-years rates. Other than asserting the ALJ erred when he "ignored" the Board's placement of Counsel in the 95th percentile in *Christensen*, 44 BRBS 39, Claimant's Br. at 5; Claimant's Reply at 3, Counsel does not challenge being placed in the 75th percentile overall and does not identify any errors with the ALJ's reasoning for doing so. Counsel's statement that the ALJ should have relied on *Christensen* because that case was "significant to *Shirrod*" is not persuasive. *Shirrod* did not address the percentile issue. Additionally, as the Ninth Circuit has recognized, Counsel has been placed in the 75th percentile on "several other occasions" and, absent improper motive, ranking an attorney is a "judgment call" to be resolved by the ALJ. See *Seachris*, 994 F.3d at 1080; *Horton v. Director, OWCP*, No. 24-5011, 2026 WL 311571, at *2 (9th Cir. Feb. 5, 2026) (the Board "did not abuse its discretion in affirming the ALJ's decision to place [Counsel] in the 75th percentile" as "this is a judgment call that the ALJ could reasonably have resolved either way.") (citing *Nelson v. ICTSI Or., Inc.*, 743 F. App'x 120, 121 (9th Cir. 2018)). Therefore, the Board's ranking in *Christensen* is not controlling.

We also are not persuaded the ALJ erred in giving "little or no weight" to his prior hourly rate fee award from an Oregon trial judge and his prior appellate hourly rate fee award. Claimant's Br. at 4-5. The ALJ explained Counsel did not establish that the case before the Oregon trial judge "involved litigation similar to Longshore work." Order at 13-14. Counsel asserts the ALJ should have found the rate to be "persuasive" and provided "no basis" for his determination, but Counsel does not challenge the ALJ's reasoning that

Counsel did not establish the Oregon trial litigation was similar to this Longshore case. Order at 13; Claimant’s Br. at 4. Additionally, Counsel misstates the Ninth Circuit court’s holding in *Shirrod* as stating that “the appellate rates for [Counsel] should be the same as the trial rates[;]” rather, the Ninth Circuit stated it “[saw] nothing in the [Board]’s *Christensen* decision that would detract from its applicability to attorney’s-fee orders for trial-level work.” Compare Claimant’s Br. at 5, with *Shirrod*, 809 F.3d at 1090; see also Claimant’s Reply at 3. While prior appellate rates may be probative when determining a fee for trial-level work, the ALJ reasonably concluded Counsel did not establish the appellate hourly rate fee award he submitted was relevant because the Ninth Circuit in that case merely determined the requested rate was reasonable as it fell between the 75th and 95th percentile rates and the court “provided little detail” regarding Counsel’s skills. Order at 13-14. Further, the ALJ reasonably found that Counsel did not explain how “the skills for his appellate work are similar to his trial-level work” in this case. *Id.* at 14.

As the remaining rates the ALJ used are tailored to the relevant community and taken together appropriately account for Counsel’s practice areas, skills, and experience, we modify the ALJ’s Order to reflect an hourly rate in 2016 of \$457 for services Counsel performed before the Office of Administrative Law Judges (OALJ).⁹ See *Shirrod*, 809 F.3d at 1089; *Blum*, 465 U.S. at 895 n.11; *Seachris*, 994 F.3d at 1080; *Christensen*, 557 F.3d at 1053-1054; *Christensen*, 445 F. App’x at 914; Order at 14. In accordance with the ALJ’s inflation adjustment, we adjust the average rate from December 2016 to December 2021 using the U.S. Department of Labor’s Bureau of Labor Statistics Inflation Calculator,¹⁰ resulting in a 2021 proxy hourly rate of \$527.74. Order at 14 n.17.

Delay Enhancement

Next, we address Counsel’s contention that the ALJ erred in failing to award a delay enhancement from December 31, 2021, to the date of his fee order on April 10, 2024. Claimant’s Br. at 6-9; Claimant’s Reply at 4-6. When assessing an attorney’s fee under the Act, the adjudicator may adjust the fee to account for delay between when the attorney’s services were provided and when fees are awarded. *Christensen*, 557 F.3d at 1055-1056; *Anderson v. Director, OWCP*, 91 F.3d 1322, 1325 (9th Cir. 1996). The Ninth Circuit has

⁹ This 2016 hourly rate is calculated based on an average of \$495 (OSB Survey: hourly billing rate of attorneys in private practice with more than thirty years of experience); \$350 (OSB Survey: personal injury and non-personal injury plaintiff civil litigation); and \$525 (Morones Survey: median rate for commercial litigation attorneys with thirty or more years of experience in 2016).

¹⁰ https://www.bls.gov/data/inflation_calculator.htm

determined that a two-year delay is “not so egregious or extraordinary as to require a delay enhancement.” *Christensen*, 557 F.3d at 1056; *but see Anderson*, 91 F.3d at 1325 (determining fourteen-year delay “egregious” and ordering award for delay enhancement).

Here the ALJ acknowledged that the OSB Survey data only included rate evidence as of 2016, while Counsel performed work before the OALJ in this case in 2020 and 2021. Order at 14. Therefore, to account for inflation, the ALJ awarded December 2021 rates for all work performed in this matter. *Id.* at 14 n.17. Because the ALJ accounted for inflation to adequately compensate Counsel for his services and fully explained his decision for using a 2021 rate, thereby, as the ALJ noted, achieving “rough justice,” we affirm the ALJ’s use of a 2021 hourly rate for all work performed. *Id.* at 14; *see Christensen*, 557 F.3d at 1056 (it is not an abuse of discretion to deny an enhancement after a two-year delay); *Anderson*, 91 F.3d at 1325; *Allen v. Bludworth Bond Shipyard*, 31 BRBS 95, 96 (1997); *but see Johnson v. Director, OWCP*, 183 F.3d 1169, 1171 (9th Cir. 1999) (remanding for consideration of a supplemental fee request resulting from a 33-month delay).¹¹

Time Entries

We next address Counsel’s argument that the ALJ erred in finding 2.5 hours for the preparation of Claimant’s witness list and a portion of his exhibit index are for clerical services and therefore in denying a fee for that time. Order at 16-20; Claimant’s Br. at 9-11; Claimant’s Reply at 6. On February 12, 2021, Counsel billed one hour to prepare Claimant’s Witness List and 1.5 hours to prepare Claimant’s Exhibit Index, and the ALJ disallowed a fee for this work. Decl. of Att’y Fees and Costs at 4; Order at 17. An attorney’s work is compensable if the hours claimed are “reasonable” for the “necessary work done” in the case and the fee is commensurate with the degree of success obtained. 20 C.F.R. §702.132(a); *see Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). The ALJ may, within his discretion, disallow a fee for hours found to be duplicative, excessive, or unnecessary, and he is afforded “considerable deference” in making those discretionary determinations. *See Tahara*, 511 F.3d at 956 (quoting *Van Gerwen v. Guar. Mut. Life Co.*, 214 F.3d 1041, 1047 (9th Cir. 2000)).

We agree with Counsel that the ALJ erred in disallowing these 2.5 hours as “clerical.” Claimant’s Br. at 9-11; Claimant’s Reply at 6; *see* Order at 18-19. The preparation of the exhibit and witness lists, which was in accordance with ALJ Berlin’s prehearing order requiring the parties to provide “precise” explanations regarding what the documents and witnesses will prove, involved independent legal judgment. ALJ Berlin’s Notice of Hearing and Pre-Hearing Order at 4; Claimant’s Exhibit Index and Witness List;

¹¹ Moreover, any delay in this case is more on par with *Christensen* than *Johnson*.

Claimant's Br. at 9-11; see *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156, 159-160 (1994); *Quintana v. Crescent Wharf & Warehouse Co.*, 18 BRBS 254, 256, *modified on recon.*, 19 BRBS 52 (1986) (counsel may not bill for clerical services, as such services are considered part of overhead, unless they involve independent legal judgment); *Staffile v. Int'l Terminal Operating Co., Inc.*, 12 BRBS 895, 898-899 (1980); see e.g., *Avila Giron v. Triple Canopy*, BRB No. 24-0238, slip op. at 9-10 (Mar. 10, 2026) (unpub.); Order at 18-20. As Counsel raises no other challenges to the ALJ's reductions, we modify the ALJ's awarded hours for Counsel's work to reflect inclusion of these 2.5 hours of work preparing Claimant's Exhibit Index and Witness List, bringing his total time to 49.48 hours.¹² Order at 18-20.

Accordingly, we affirm in part and modify in part the ALJ's Order Granting Reconsideration, Vacating Attorney Fee Order Issued April 5, 2024, and Order Modifying Attorney Fee Order to reflect an awarded hourly rate of \$527.74 and 49.48 hours of work for Counsel. As modified, Employer must pay Counsel a total of \$27,068.83 as the full and final attorney's fee for all services performed before the OALJ, plus \$244.35 in costs.¹³

SO ORDERED.

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

GRESH, Administrative Appeals Judge, concurring:

I concur with the majority's decision in this case but write separately to comment on a couple of aspects of the ALJ's Order. The ALJ in this case specifically noted he issued

¹² The ALJ awarded Counsel 42.23 hours from his initial fee petition, which we modify to include an additional 2.5 hours, and the ALJ awarded Counsel's requested 4.75 hours for his work replying to Employer's objections to his fee petition. Order at 20. When added, these awards total 49.48 hours for Counsel's work before the ALJ.

¹³ Counsel is entitled to \$26,112.58 for 49.48 hours of his work at an hourly rate of \$527.74; \$870 for 4.35 hours of legal assistant services performed by Ms. Duncan at an hourly rate of \$200; \$41.25 for 0.25 hour of legal assistant services performed by Ms. Gridley at an hourly rate of \$165; \$45 for 0.3 hour of legal assistant services performed by

a fee award for Counsel in *Francis v. Jones Stevedoring Co.*, ALJ No. 2014-LHC-00813 (Att’y Fee Order) (Jan. 26, 2024) and that Counsel’s “evidence and arguments here are the same as those submitted in *Francis*.” Order at 7. Nevertheless, the ALJ addressed the evidence presented by Counsel in this case in support of his fee petition.

One reason the ALJ gave for not placing Counsel in the highest percentile is he does not manage a team of attorneys in complex litigation. Order at 8. But the Board vacated in part the ALJ’s Attorney Fee Order in *Francis*, noting that the United States Court of Appeals for the Ninth Circuit in *Seachris v. Brady-Hamilton Stevedore Co.*, 994 F.3d 1066, 1079-1080 (9th Cir. 2021) expressly rejected reliance on such a consideration when evaluating this same attorney’s hourly rate. *See Francis v. Jones Stevedoring Co.*, BRB No. 24-0245, slip op. at 8-9 (July 22, 2026) (unpub.) (Jones, J., concurring in part and dissenting in part). Yet the regulation at 20 C.F.R. §802.211 requires a party represented by counsel to file a brief which sets forth the issues to be considered by the Board and the facts and law supporting the party’s contentions. As Counsel does not challenge this finding of the ALJ’s on appeal in this case, he has forfeited this argument. *Hernandez v. Garland*, 47 F.4th 908, 916 (9th Cir. 2022) (issues not “‘specifically and distinctly’ argue[d] ... in [petitioners’] opening brief” are “forfeited”); *see also Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007). In any event, as the ALJ used rates tailored to the relevant community which, taken together, appropriately accounted for Counsel’s practice areas, skills, and experience in accordance with binding Ninth Circuit precedent, any error in this regard would be harmless. *See Haw. Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 648-649, 651-652 (9th Cir. 2010).

In addition, after noting that he would follow the Ninth Circuit’s guidance in *Seachris*, the ALJ nevertheless commented:

In my personal opinion, the Ninth Circuit’s jurisprudence in the area of Longshore fee litigation has resulted in an unnecessarily complex analysis and nearly untenable process of resolving fee disputes. The framework developed in *Christensen [v. Stevedoring Servs. of Am.]*, 557 F.3d 1049 (9th Cir. 2009), *Van Skike [v. Director, OWCP]*, 557 F.3d 1041 (9th Cir. 2009), *Shirrod [v. Director, OWCP]*, 809 F.3d 1082 (9th Cir. 2015), and *Seachris* has transformed what should be a straightforward and predictable adjudication into a drawn-out, convoluted process that, in practice, departs substantially from the Supreme Court’s admonition that judges need not act as green-eyeshade accountants and that fee disputes should not devolve into a second major litigation. But I am bound to follow that framework in this

Ms. Gauthier at an hourly rate of \$150; and costs of \$244.35. Employer is entitled to a credit for any amount of the fee and costs already paid.

case, so I have considered all relevant evidence and have endeavored to develop a reasonable proxy market based on the evidence before me in keeping with the Ninth Circuit's directives.

Order at 12 n.12. But the ALJ did not explain what was unclear about any of the cases he referenced. The attorney whose fees are at issue in this case is the same attorney whose fee litigation produced the three decisions that the ALJ described as having created an untenable framework. Because *Seachris* constitutes binding precedent in this case arising within the jurisdiction of the Ninth Circuit, "the tone of the ALJ's" comments is unnecessary as it could potentially suggest an "appearance of partiality" in cases before the ALJ involving attorney fee petitions arising within the Ninth Circuit's jurisdiction. *See Seachris*, 994 F.3d at 1084. However, again, the ALJ used rates tailored to the relevant community which, taken together, appropriately accounted for Counsel's practice areas, skills, and experience in accordance with Ninth Circuit precedent in this case.

DANIEL T. GRESH
Administrative Appeals Judge