U.S. Department of Labor

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

BRB No. 24-0393

JULIO ARROYO CORDERO Claimant-Petitioner v. CONSTELLIS GROUP and CONTINENTAL INSURANCE COMPANY Employer/Carrier-Respondents	)	**NOT-PUBLISHED** DATE ISSUED: 06/16/2026 DECISION and ORDER

Appeal of the Supplemental Decision & Order Awarding Attorney's Fees of Stephen R. Henley, Chief Administrative Law Judge, United States Department of Labor.

Allison T. Graber and Jacob S. Garn (Attorneys Jo Ann Hoffman & Associates, P.A.), Lauderdale-by-the-Sea, Florida, for Claimant.

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

PER CURIAM:

Claimant appeals Chief Administrative Law Judge (ALJ) Stephen R. Henley's Supplemental Decision & Order Awarding Attorney's Fees (2021-LDA-04586) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act), as extended by the Defense Base Act, 42 U.S.C. §§1651-1655 (DBA). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, based on an abuse of discretion or not in accordance with law.[1] *See 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).

On September 17, 2020, Claimant filed a claim under the Act seeking disability compensation and medical benefits for a psychological injury he sustained while working for Employer in Iraq from 2006 to 2011. CXs 1, 25. Employer controverted the claim. EX 9. On June 29, 2021, the matter was referred to the Office of Administrative Law Judges and the parties opted for a decision based on the written record. On January 19, 2024, the ALJ issued a Decision and Order Awarding Benefits, awarding Claimant temporary total disability compensation and medical treatment for his work-related psychological injury.

On April 5, 2024, Claimant's counsel, Alison T. Graber and Jacob S. Garn (collectively "Counsel") filed their petition for an attorney's fee and costs with the ALJ, seeking $78,490, plus $1,810.18 in costs (Fee Pet.). Counsel contended the relevant market for their services is either a national market or South Florida and sought the following rates: $550 per hour for work performed by Attorney Garn, $500 per hour for work performed by Attorney Graber, and $200 per hour for work performed by legal assistants.[2] Fee Pet. at 12-14, 16. In support of the requested hourly rates, they submitted their unsworn declarations and cited the 2023 Real Rate Report[3] and attorney's fee awards in other

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[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the office of the district director who handled this claim is located in New York. 33 U.S.C. §921(c); *Glob. Linguist Sols., L.L.C. v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019); *Hice v. Director, OWCP*, 156 F.3d 214, 218 (D.C. Cir. 1998) ("The location of . . . the district director[] who handled [the] claim determines the proper court to hear [the] appeal."); Referral Letter (Sep. 19, 2024).

[2] The $78,490 fee request consisted of $46,860 for 85.2 hours of work performed by Attorney Garn at $550 per hour, $28,250 for 56.5 hours of work performed by Attorney Graber at $500 per hour, and $3,380 for 16.9 hours of work performed by legal assistants at $200 per hour. Fee Pet. at 16.

[3] Counsel did not submit a copy of the 2023 Real Rate Report as evidence. They asserted in their fee petition that the 2023 Real Rate Report established: a national average partner rate of $784 per hour; a median partner rate in the Miami region of $575 per hour; median rates of $520 per hour for litigation partners and $602 per hour for non-litigation partners in Miami; a median rate of $555 per hour for Miami partners with under twenty-

Longshore, DBA, and Black Lung Benefits Act cases. In response, Employer objected to the requested hourly rates for Attorneys Garn and Graber as "excessive" and to specific time entries as vague, duplicative, and excessive.[4] Emp. Fee Objs. at 6-7.

On June 25, 2024, the ALJ issued a Supplemental Decision & Order Awarding Attorney's Fees (Fee Award), awarding Counsel $64,320 for an attorney's fee and $1,810.18 for costs. He awarded Attorney Garn an hourly rate of $450, Attorney Graber an hourly rate of $400, and the legal assistants an hourly rate of $200. Fee Award at 3-4. The ALJ then considered the reasonableness and necessity of the work performed and rejected Employer's objections to specific time entries. He awarded the total requested 85.2 hours for Attorney Garn's work, 56.5 hours for Attorney Graber's work, and 16.9 hours for the legal assistants' work. *Id.* at 4; *see supra* note 2.

On appeal, Counsel challenges the ALJ's awarded hourly rates as not supported by substantial evidence and insufficiently explained.[5] Employer has not filed a response.

Under federal fee-shifting statutes such as the Act and the DBA, the lodestar method, by which the number of hours reasonably expended in preparing and litigating the case is multiplied by a reasonable hourly rate, presumptively represents a reasonable attorney's fee. *Perdue v. Kenny A.*, 559 U.S. 542, 542 (2010); *City of Burlington v. Dague*, 505 U.S. 557, 557 (1992). To receive an employer-paid fee, the person seeking a fee for work performed on behalf of the claimant must file an application describing the necessary work performed, the professional status of and the normal billing rate for each person performing such work, and the number of hours each person spent on the case. 20 C.F.R. §702.132. The fee applicant bears the burden of establishing the rate claimed and the hours worked are reasonable. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

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one years of experience; and a median rate of $520 per hour for Miami partners with three to seven years of experience. Fee Pet. at 13-14.

[4] Referencing another ALJ's attorney's fee award to Counsel in a different claim, Employer contended reasonable hourly rates for Attorneys Garn and Graber are $400 and $350 per hour, respectively. Emp. Fee Objs. at 5-6; *see Avila Giron v. Triple Canopy*, 2021-LDA-00843, slip op. (ALJ Feb. 29, 2024) (ALJ awarding $400 per hour to Attorney Garn and $350 per hour to Attorney Graber for work performed between 2020 and 2023).

[5] We affirm as unchallenged on appeal the ALJ's award for an hourly rate of $200 for legal assistant work and his award for all hours and expenses requested. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

We agree with Counsel's assertion that the ALJ's explanation regarding the hourly rates he awarded for Attorneys Garn and Graber is insufficient to enable meaningful review.[6] 5 U.S.C. §557(c)(3)(A); *see Perdue*, 559 U.S. at 558 ("It is essential that the judge provide a reasonably specific explanation for all aspects of a fee determination."). While the ALJ noted he considered the parties' arguments and the totality of the market rate evidence submitted, he did not discuss or analyze the parties' arguments or the evidence he considered. Specifically, he did not identify the relevant market, the source or sources from which he obtained the average rates, which "fields" he considered "similar," which rates he used for his calculations, or which "other fee awards" he relied on. *Blum v. Stenson*, 465 U.S. 886, 895 (1984) (An attorney's hourly rate is "to be calculated according to the prevailing market rates in the relevant community."); *Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 251 (4th Cir. 2004) ("Evidence of fee awards in comparable cases is generally sufficient to establish the prevailing market rates in the relevant community.") (citation modified); *see also Hernandez v. Nat'l Steel & Shipbuilding Co.*, 54 BRBS 13, 15 (2020) (An ALJ "may advert to prior fee awards under the Act if a claimant has failed to meet his burden of establishing a market rate."). The ALJ stated he considered both Attorneys Garn's and Graber's experience and the 20 C.F.R. §702.132(a) factors, but he did not explain how Counsel's experience or the other regulatory factors influenced his hourly rate analysis. *Christensen v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1054-1055 (9th Cir. 2009). Consequently, we vacate the ALJ's hourly rate determinations for Attorneys Garn and Graber and remand the case for further analysis and explanation. On remand, the ALJ must identify the relevant market, specify the evidence he credits and rejects, and explain with sufficient detail the reasons for and

[6] The ALJ's hourly rate analysis, following a paragraph reciting the relevant law, states:

> Having weighed the arguments and totality of the scant evidence submitted by the parties, I find that Attorney Garn has established entitlement to a rate of $450.00 per hour based on the average rates for Florida attorneys in similar fields and other fee awards and considering his experience and the good result achieved for the Claimant. I further find that an hourly rate of $400.00 for Attorney Graber is reasonable given her experience and years of practice. Therefore, I APPROVE an hourly rate of $450.00 for Attorney Garn, an hourly rate of $400.00 for Attorney Graber, and $200/hour for legal assistant time.

Fee Award at 3-4.

calculations of his hourly rate findings.[7] *Hernandez*, 54 BRBS at 15; *Steevens v. Umpqua River Navigation*, 35 BRBS 129, 135-136 (2001); *Jensen v. Weeks Marine, Inc.*, 33 BRBS 97, 101 (1999); *see also Perdue*, 559 U.S. at 558-559.

Accordingly, we vacate the ALJ's hourly rate determinations for Attorneys Garn and Graber and remand the ALJ's fee award determination for further consideration consistent with this decision. In all other respects, we affirm the ALJ's Supplemental Decision & Order Awarding Attorney's Fee.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

[7] To the extent necessary, the ALJ should also address Counsel's request for inflationary adjustments.