



BRB No. 24-0238

ELIO AVILA GIRON )

Claimant-Petitioner )

v. )

TRIPLE CANOPY )

and )

CONTINENTAL INSURANCE COMPANY )

Employer-Respondent )

**NOT-PUBLISHED**

DATE ISSUED: 03/10/2026

DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Noran J. Camp, 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.

Alexandra E. Grover, Rebecca L. Todd, and Makenzi C. McDonald (Brown Sims), Houston, Texas, for Employer and Carrier.

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

PER CURIAM:

Claimant’s counsel (Counsel) appeals Administrative Law Judge (ALJ) Noran J. Camp’s Supplemental Decision and Order Awarding Attorney Fees (2021-LDA-00843) 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).<sup>1</sup> 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 the law. *See Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 955 (9th Cir. 2007); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272, 273 (1980).

On December 20, 2016, Claimant filed a claim for compensation and medical benefits under the Act for an alleged psychological injury he suffered as a result of his employment as a security guard for Employer in Iraq from December 2006 to November 2010. On March 25, 2020, he amended his claim to include an additional hearing loss injury due to that same employment. On September 18, 2023, the ALJ issued a Decision and Order Awarding Benefits (D&O). He awarded Claimant both disability and medical benefits for his work-related psychological injury and medical benefits for his work-related hearing loss. D&O at 4, 39.

On January 18, 2024, Counsel filed an amended Petition for Approval of Attorney's Fees and Costs (Fee Pet.) seeking a total award of \$92,915.98, representing a fee of \$90,640 and \$2,275.98 in costs.<sup>2</sup> Fee Pet. at 11. Employer filed a response on February 21, 2024, objecting to the attorneys' requested hourly rates and to specific time entries on the grounds they were excessive, improperly used block billing, were duplicative, or represented work performed before the Office of Workers' Compensation Programs (OWCP).<sup>3</sup>

On February 29, 2024, the ALJ issued a Supplemental Decision and Order Awarding Attorney Fees and Costs (Fee Order). For purposes of establishing the market rate, the ALJ found the relevant community to be South Florida and awarded hourly rates of \$400 for Attorney Garn and \$350 for Attorney Graber. Fee Order at 5, 9. He reduced

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<sup>1</sup> 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 filed the ALJ's decision is located in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45, 47 (2011); *see also Glob. Linguist Sols., L.L.C. v. Abdelmegeed*, 913 F.3d 921, 922 (9th Cir. 2019).

<sup>2</sup> Counsel requested: \$62,865 for 114.3 hours of services at a rate of \$550 per hour for Attorney Jacob S. Garn, \$25,350 for 50.7 hours of services at a rate of \$500 per hour for Attorney Allison T. Graber; and \$2,425 for 19.4 hours of services at a rate of \$125 per hour for Legal Assistants Genesis Casanova and Fanny Contreras. Fee Pet. at 10.

<sup>3</sup> Employer filed an Amended Response on February 23, 2024, but the ALJ found Employer failed to establish its relevance and therefore considered only its original response. Fee Order at 2 n.4.

the time billed in several itemized entries, including all time billed for work performed before the OWCP and additional time he found excessive, clerical, and/or duplicative. *Id.* at 10-21. In all, he deducted 42.4 hours of time from Counsel’s requested hours.<sup>4</sup> *Id.* at 11, 21. The ALJ awarded Counsel a total of \$52,710.98, representing a fee of \$50,435 and \$2,275.98 in costs. *Id.* at 22 n.15.

Counsel appeals, challenging the ALJ’s calculation of hourly rates and his reduction of particular itemized billing entries. Employer responds, urging affirmance of the ALJ’s fee award, and Counsel filed a reply brief reiterating its contentions.

### **Hourly Rates**

Counsel asserts the ALJ’s calculation of the attorneys’ hourly rates is arbitrary and not supported by substantial evidence. He argues the ALJ improperly relied on only one piece of evidence (the 2022 Economics and Law Office Management Survey) to calculate the hourly rate, arbitrarily awarded Attorney Graber \$50 less per hour than Attorney Garn, and failed to adjust the rates to account for inflation. Claimant’s Petition for Review and Brief (Cl. PR) at 5-12.

The Supreme Court of the United States has recognized the “lodestar method,” in 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” under a federal fee-shifting statute such as the Longshore Act. *Perdue v. Kenny A.*, 559 U.S. 542, 542 (2010); *City of Burlington v. Dague*, 505 U.S. 557, 559 (1992). An attorney’s 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); *see Perdue*, 559 U.S. at 551. Thus, once the ALJ concluded South Florida is the relevant community for determining the hourly rates,<sup>5</sup> *see* Fee Order at 5, the burden was on Counsel to produce satisfactory evidence “that the requested hourly rates are in line with those prevailing in the relevant community for similar services by lawyers of comparable skill, experience, and reputation.” *Blum*, 465 U.S. at 896 n.11; *see Loranger v. Stierheim*, 10 F.3d 776, 781 (11th Cir. 1994).

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<sup>4</sup> Specifically, the ALJ deducted 33 hours of Attorney Garn’s billed time, 4.8 hours of Attorney Graber’s billed time, 2 hours of Legal Assistant Contreras’s billed time, and 2.6 hours of Legal Assistant Casanova’s billed time. Fee Order at 11, 21.

<sup>5</sup> As the ALJ’s finding that South Florida is the relevant community is not challenged on appeal, we affirm it. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

Counsel put forth limited evidence to support the requested hourly rates: a 2009 American Bar Association (ABA) study and three ALJ fee awards issued in Longshore and DBA claims from 2018 through 2020 (adjusted for inflation). Fee Pet. at 9-10; see Fee Order at 6-7. Specifically, Counsel argued this evidence demonstrated the market rate for partner-level attorneys in South Florida ranged from \$400 to approximately \$575 per hour. *Id.* In its response, Employer relied on the Florida Bar’s Results of the 2022 Economics and Law Office Management Survey, the 2022 Legal Trends Report of Clio, and one ALJ-issued fee award from 2018, which it maintained collectively showed Attorney Garn’s hourly rate should not exceed \$300 per hour and Attorney Graber’s should not exceed \$225. Employer’s Response to Fee Petition (Emp. Resp.) at 16, 18-22, 24-27; see Fee Order at 6-7.

After considering Counsel’s experience and the evidence submitted by both parties, the ALJ rationally concluded Counsel failed to meet the burden of establishing entitlement to an hourly rate of \$550 per hour for Attorney Garn and \$500 per hour for Attorney Graber. Fee Order at 6-8. The ALJ found the 2009 ABA Study insufficient to support the requested hourly rates because it was based on “150 public court filings, mostly in bankruptcy and government cases” and did not reflect rates for attorneys practicing Longshore law.<sup>6</sup> Fee Order at 8. Moreover, only an excerpt of the actual study was submitted and the ALJ was unable to access the complete study. *Id.* As for the other ALJ fee awards Counsel cited,<sup>7</sup> the ALJ noted the attorneys in those cases had been licensed to practice law since the 1990s (twenty years prior to Attorneys Garn and Graber) and had significantly more legal experience.<sup>8</sup> Fee Order at 8. The ALJ therefore found it did not follow that Attorneys

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<sup>6</sup> The ABA Study found South Florida partner-level attorneys typically charged between \$400 to \$500 an hour, and associates charged \$140 to \$460. Fee Order at 6; Fee Pet. at 9.

<sup>7</sup> Counsel cited *Balcazar v. SOC-SMG*, 2016-LDA-00403 (June 1, 2018) (\$465 per hour awarded to a partner-level attorney handling DBA cases in Florida), *Lazaro v. SOC-SMG, Inc.*, 2017-LDA-00092 (May 13, 2019) (\$450 per hour awarded to same), and *Guevara v. SOC, L.L.C.*, 2019-LDA-00209 (Aug. 3, 2020) (ALJ awarded hourly rates of \$485 and \$450). Fee Pet. at 9-10.

<sup>8</sup> Based on the significant difference in experience and years of practice, the ALJ rationally found *Balcazar* and *Lazaro* were not comparable. Attorney Garn was admitted to the Florida Bar in 2014 after graduating from law school in 2012 and Attorney Graber was admitted to the Florida Bar in 2018, and the ALJ found it is unclear when they began practicing Longshore law. Fee Order 8-9; see Fee Pet. at 6-7. The ALJ also noted Counsel

Garn and Graber were entitled to the hourly rates awarded in *Lazaro*, *Balcazar*, and *Guevara*, which were for attorneys with “nearly double the experience and more detailed involvement in the Longshore community.” *Id.* at 9.

The ALJ then considered Employer’s evidence of market rates. *Id.* He noted the Legal Trends Report indicates the hourly rates for attorneys in Florida and their practice area, but not by specific location. Fee Order at 9; Emp. Resp., Ex. 11. Rather, the ALJ found the 2022 Economics and Law Office Management Survey (2022 Survey) offered the most reliable evidence of market rates and, although it did not contain a breakdown of rates by area of law, it provided the median hourly rate for attorneys in Southeast Florida. Fee Order at 9; Emp. Resp., Ex. 10. He concluded Attorney Garn is entitled to an hourly rate of \$400 in accordance with the 2022 Survey and Attorney Graber is entitled to an hourly rate of \$350, based on the \$50 difference in their original requested hourly rates.<sup>9</sup> Fee Order at 9. As the ALJ considered all the relevant rate evidence before him, *H.S. [Sherman] v. Dep’t of Army/NAF*, 43 BRBS 41, 44 (2009), and his findings are rational and sufficiently explained, *Jensen v. Weeks Marine, Inc.*, 33 BRBS 97, 101 (1999), we affirm his hourly rate calculations.

Next, Counsel asserts the ALJ abused his discretion by failing to adjust the awarded hourly rates upward to account for inflation. Cl. PR at 11-12. An ALJ may award a higher rate based on unusual issues, substantial benefits to the claimant, and inflation. *Powell v. Nacirema Operating Co., Inc.*, 19 BRBS 124, 127 (1986). ALJs commonly adjust market rates to account for inflation and compensate attorneys for a delay in payment, as market rates assume that an attorney fee would be promptly paid and payment delays deprive attorneys of the benefits of those rates. *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *Anderson v. Director, OWCP*, 91 F.3d 1322, 1324 (9th Cir. 1996); *Nelson v. Stevedoring Servs. of Am.*, 29 BRBS 90, 97 (1995). Accordingly, an ALJ may adjust an award to account for delay in payment, but the method of adjustment is discretionary and does not necessarily require use of the attorney’s current hourly rate. *Anderson*, 91 F.3d at 1324; *Nelson*, 29 BRBS at 97.

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inaccurately identified the awarded hourly rates in *Guevara*. Fee Order at 7; *Guevara*, 2019-LDA-00209.

<sup>9</sup> We reject Claimant’s contention that the ALJ abused his discretion by arbitrarily setting Attorney Graber’s rate at \$50 less than Attorney Garn’s rate. Cl. PR at 5, 9. The ALJ adequately explained the \$50 difference was based on Counsel’s own “estimation that the hourly rates of Attorneys Garn and Graber differ by \$50.00” and is supported by evidence of Attorney Garn’s greater experience. Fee Order at 9; *Jensen v. Weeks Marine, Inc.*, 33 BRBS 97, 101 (1999).

Here, the ALJ relied solely on the 2022 Survey showing recent market rates in South Florida to calculate the hourly rates and did not make any adjustments. Fee Order at 5, 9. Counsel has not established any error. We first note Counsel never specifically requested a delay enhancement; in fact, Counsel referenced an inflationary adjustment only in calculating market rates based on the prior ALJ fee awards that were submitted. Fee Pet. at 9-10. Moreover, there has been no extraordinary delay in payment such as in the cases where an adjustment was found to be justified. *See Anderson*, 91 F.3d at 1325 (delay of fourteen years); *Nelson*, 29 BRBS at 97 (delay of eleven years); *see also Christensen v. Stevedoring Servs. of Am. Inc.*, 557 F.3d 1049, 1056 (9th Cir. 2009) (delay of two years was not “so egregious or extraordinary” to justify delay enhancement). Counsel began representing Claimant in March 2020, the ALJ issued an award of benefits in September 2023, Counsel’s fee petition was submitted in January 2024, and the fee award was issued in February 2024. Thus, it was reasonable for the ALJ to base his calculation of market rates on the 2022 Survey without any adjustment for inflation. We therefore affirm this determination.

### **Reduction of Hours**

Counsel next contends the ALJ’s reduction of hours was arbitrary and not supported by substantial evidence because he failed to sufficiently explain his reductions. Cl. PR at 13. 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). Thus, the factfinder may, within his discretion, disallow a fee for hours found to be duplicative, excessive, or unnecessary and is afforded “considerable deference” in making those determinations. *See generally Tahara*, 511 F.3d at 956. Given the factfinder’s superior understanding of the underlying litigation, he is in the best position to make this determination. *Id.*; *see also Fox v. Vice*, 563 U.S. 826, 838 (2011). The ALJ, however, must adequately explain his reasons for any disallowances or reductions. *See Carter v. Caleb Brett, LLC*, 757 F.3d 866, 869 (9th Cir. 2014); *Roach v. N.Y. Protective Covering Co.*, 16 BRBS 114, 115 (1984); *Bell v. Volpe Head Constr. Co.*, 11 BRBS 377, 380 (1979).

The ALJ deducted a total of 42.4 hours of the 184.4 hours Counsel requested, or approximately 23% of the request. Fee Order at 10-22. Of the 42.4 disallowed hours, the ALJ disallowed 8.2 hours for work performed before the OWCP and 34.2 hours for work he found to be excessive, duplicative, and/or clerical. *Id.* The ALJ set forth the standards he applied in his review of the itemized time entries, *id.* at 4-5, and for every reduction, the ALJ identified the time entry, noted the hours requested, how much time he allowed or

reduced, and the reason for the reduction. *Id.* at 11-22. Contrary to Counsel's argument, the ALJ sufficiently explained his time reductions.<sup>10</sup> *Roach*, 16 BRBS at 115.

Counsel also asserts the ALJ erred by reducing or disallowing several time entries on the grounds they were clerical. Cl. PR at 17. Time that an attorney spends on traditional clerical duties is not compensable and cannot be included as part of the attorney's reported number of hours. *Staffile v. Int'l Terminal Operating Co., Inc.*, 12 BRBS 895, 898 (1980). Traditional clerical duties performed by clerical employees are also not compensable services for which separate billing is permissible but rather must be included as part of the attorney's overhead in setting the hourly rate requested. *Id.*; see also *Morris v. Cal. Stevedore & Ballast Co.*, 10 BRBS 375, 381 (1979). However, if non-lawyers perform work which is usually performed by attorneys, the time spent by clerical employees performing such services is compensable and separately billable. *Quintana v. Crescent Wharf & Warehouse Co.*, 18 BRBS 254, 256 (1986); *Staffile*, 12 BRBS at 899.

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<sup>10</sup> The cases Counsel relies upon to support his argument that the ALJ failed to adequately explain his time reductions are factually distinguishable from the present case. Cl. PR at 15-16; Cl. Reply at 9-10 (see *Swain v. Bath Iron Works Corp.*, 14 BRBS 657 (1982), *Collins v. Gen. Dynamic Corp.*, 14 BRBS 458 (1981), and *Eaddy v. R.C. Herd & Co.*, 13 BRBS 455 (1981)). In *Swain*, the Board vacated an ALJ's 75% reduction of a fee request when the ALJ simply adopted the employer's objections without identifying which hours he found excessive. *Swain*, 14 BRBS at 665-666. In *Collins*, the ALJ halved a fee request for 5.25 hours of work, finding the time "excessive . . . in consideration of the complexity of the case." *Collins*, 14 BRBS at 459. The Board held this "broad statement" was inadequate, considering the amount of time requested, the routine nature of the claim, the fact that the claimant's counsel had voluntarily reduced the amount of his request in consideration of the amount of the claimant's award, and the lack of objections from the employer. *Id.* In *Eaddy*, the ALJ reduced a request for a fee of \$10,000 to \$3,000, finding claimed correspondence and conversations excessive, in part. *Eaddy*, 13 BRBS at 456. The Board held the ALJ's explanation for the substantial reduction was insufficient, as he failed to indicate what work and which hours he disallowed as excessive. *Id.* at 457. The reduction in this case (approximately 23%) is not as great as the reductions in each of the three cited cases. Moreover, unlike the ALJs in *Swain*, *Collins*, and *Eaddy*, the ALJ in this case identified which time entries he reduced as well as the nature and reasons for each reduction. Fee Order at 10-22. To require him to provide additional justification for each individual reduction would undermine his discretionary authority, require an inordinate amount of time, and turn him into the very "green-eyeshade accountant" he is not meant to be. *Fox*, 563 U.S. at 838; *Tahara*, 511 F.3d at 956.

The ALJ reduced or disallowed a total of 5.6 hours as purely clerical and 1.3 hours as both clerical and excessive, for a total reduction of 6.9 hours.<sup>11</sup> Fee Order at 11, 13-15, 17, 19-21. At the outset, we reject Counsel’s contention that the ALJ erroneously ignored law allowing a fee for clerical work performed by legal staff working under the guidance of an attorney, as the ALJ disallowed only one time entry billed to a non-lawyer, and that entry does not indicate that the work performed – e-filing a closing argument brief – was done under an attorney’s guidance. Cl. PR at 17-18; Fee Order at 19. Further, we reject Counsel’s contention that e-filing the closing argument brief was non-clerical. Counsel cites in support of his argument *Wood v. Ingalls Shipbuilding, Inc.*, 28 BRBS 156 (1994), and *Reitz v. Am. Sugar Refining Co./Domino*, 2021-LHC-00087, slip op. (ALJ Oct. 31, 2023),<sup>12</sup> yet both cases are factually distinguishable. In *Wood*, the Board found time spent both preparing and filing a notice of appeal was non-clerical because it was necessary for the case to be appealed to the Board, see 28 BRBS at 160, but here the disallowed time involved only the task of filing the document with the Office of Administrative Law Judges. In *Reitz*, the ALJ did not reduce any time as clerical. *Reitz*, 2021-LHC-00087, slip op. at 5. Rather, the ALJ in that case determined the hours provided for drafting the closing argument brief were excessive and reduced those hours by half. *Id.* Neither case supports Counsel’s argument that e-filing the closing brief requires independent legal judgment such that Counsel should be compensated for that time.

We likewise reject Counsel’s argument that the ALJ erred in finding “attorney/paralegal conferences” and communications with opposing counsel to be clerical. Cl. PR at 18, 20; Cl. Reply at 12; see Fee Order at 13-15, 19. Counsel billed 0.3 hour for two “attorney/paralegal conferences,” one regarding setting up an expert evaluation and another about filing a motion for a continuance. Fee Pet., Ex. 4 at 7-8. Counsel relies on *Morris* as supporting that these conferences should be considered compensable because they were reasonable and necessary for the claim. Cl. PR at 18; Cl. Reply at 11. But *Morris* involved an ALJ erroneously disallowing time for attorney-client conferences, not intra-office conferences. *Morris*, 10 BRBS at 383. As Counsel has not explained how these entries involved independent legal judgment, the ALJ reasonably found these tasks were clerical. See *Quintana*, 18 BRBS at 256 (tasks such as calendaring deadlines, organizing case files, and drafting correspondence are clerical in nature unless they involve independent legal judgment); see also *Brown v. Marine Terminals Corp.*, 30

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<sup>11</sup> Counsel argues the ALJ “arbitrarily ‘disallowed’ 7.8 hours” as clerical; however, our review of the Fee Order confirms the ALJ disallowed only 6.9 hours for this reason. Cl. PR at 17; Fee Order at 11-22.

<sup>12</sup> See Cl. PR at 19 n.101.

BRBS 29, 34 (1996) (Board affirmed an ALJ's reduction of intra-office communications as clerical).

As for the reduced or disallowed time entries documenting communication with opposing counsel, Counsel argues that by disallowing a fee for these time entries, the ALJ “seems to be asserting that attorneys should not talk to one another.” Cl. PR at 20. However, of the four time entries in the ALJ's order that classified communications with opposing counsel as clerical, three involved a total of 0.3 hour for receipt of automated emails notifying Counsel of opposing counsel's limited access to emails (which the ALJ disallowed entirely), and the fourth involved 2.1 hours spent preparing and sending an itemization of hours and the fee demand (which the ALJ reduced by 1.1 hour as both excessive and clerical). Fee Order at 15. Again, Counsel fails to show how receiving emails documenting opposing counsel's communication issues constitutes an exercise of independent legal judgment, *see Quintana*, 18 BRBS at 256, and given the considerable deference afforded to the factfinder in assessing whether services are reasonable, Counsel has not demonstrated the ALJ abused his discretion in reducing the time for preparing and sending an itemized list of time billed as both excessive and clerical. *Welch v. Pennzoil Co.*, 23 BRBS 395, 402 (1990); *Quintana*, 18 BRBS at 256; *Berkstresser v. Washington Metro. Area Transit Auth.*, 16 BR3S 231, 236 (1984); *Staffile*, 12 BRBS at 899. Consequently, we reject Counsel's contentions related to these reduced or disallowed time entries.

We also reject the assertion that the ALJ erred by classifying as clerical Attorney Garn's time for receiving and reviewing communications from Claimant which contained medical receipts and records. Cl. PR at 20; Fee Order at 13-15, 19-21. Most of these entries indicated the emails contained “medical receipts,” as opposed to records, and it was reasonable for the ALJ to find the services to be clerical in nature.<sup>13</sup> It is the attorney's responsibility to explain how seemingly clerical activities required independent legal judgment, and in these instances, Counsel failed to do so. The burden was on Counsel to

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<sup>13</sup> The ALJ disallowed as clerical 1.9 hours of time Counsel spent receiving and reviewing emails from Claimant with attached medical receipts. Fee Order at 13-15, 19-21. Specifically, the ALJ disallowed seven entries on the following dates: January 20, 2022; two entries on March 1, 2022; March 20, 2022; November 13, 2023; November 20, 2023; and November 28, 2023. *Id.* The entries documenting emails from Claimant that were not disallowed wholly, but instead were reduced by 0.1 hour, contained both medical receipts and records. Fee Order at 11, 13. We affirm the ALJ's decision to distinguish between receipts and records and to reduce the entries dated March 12, 2021, and September 21, 2021, on the grounds they were both clerical and excessive. *Id.*

submit a self-sufficient document that would allow the ALJ to assess the reasonableness of the fee request. 20 C.F.R. §702.132; *see also Richardson v. Cont'l Grain Co.*, 336 F.3d 1103, 1107 (9th Cir. 2003) (a claimant bears the burden of showing that he is entitled to attorney's fee). As the petitioner, the burden is also on Counsel to establish the ALJ abused his discretion in rejecting this time – he has not done so.

Nevertheless, we agree the ALJ erred in finding time spent preparing exhibit and witness lists to be “clerical.” Cl. PR at 18; *see* Fee Order at 17. On May 24, 2022, Counsel billed 4.7 hours for the following task: “Reviewed file; Prepared and sent Claimant’s Exhibit Index and Witness List for parties’ exchange of evidence.” Fee Pet., Ex. 4 at 15. The ALJ found the entry to be clerical and reduced the itemized entry by 2.7 hours, thereby allowing a fee for 2 hours of that work. Fee Order at 17. As the preparation and drafting of exhibit and witness lists unquestionably requires legal judgment but the sending of those lists do not, the entire entry is not clerical in nature – as is evident by the ALJ’s reduction

of time instead of disapproving it in its entirety. This is consistent with finding it excessive rather than clerical. Therefore, we consider any mischaracterization of the entry by the ALJ as harmless error as we are able to tell what he did and why. *See E. Associated Coal Corp. v. Director, OWCP*, 724 F.3d 561, 575 n.13 (4th Cir. 2013).

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

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge