

U.S. Department of Labor

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



BRB No. 24-0269

JERRY W. HILL )

Claimant-Petitioner )

v. )

CLD PACIFIC GRAIN )

and )

AMERICAN HOME ASSURANCE )  
COMPANY and CHARTIS CLAIMS, )  
INCORPORATED )

Employer/Carrier- )  
Respondents )

**NOT-PUBLISHED**

DATE ISSUED: 03/13/2026

DECISION and ORDER

Appeal of the Attorney Fee Order on Remand of Christopher Larsen,  
Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Christopher Larsen’s Attorney  
Fee Order on Remand (2011-LHC-00891) (Fee Order) rendered on a claim filed pursuant  
to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §§901-  
950 (Act). 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.<sup>1</sup> 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).

Claimant sustained a groin injury on June 19, 2008, while working for Employer. On June 25, 2012, ALJ William Dorsey awarded Claimant temporary total disability benefits for his work-related injury. June 25, 2012 Decision and Order Granting Temporary Total Disability Benefits. Thereafter, Claimant's counsel, Charles Robinowitz (Counsel), filed an attorney's fee petition seeking a total fee of \$14,375, consisting of \$13,100 for 32.75 hours of Counsel's services at an hourly rate of \$400 and \$1,275 for 8.5 hours of paralegal work at an hourly rate of \$150, for work performed before the Office of Administrative Law Judges (OALJ) between May 13, 2011, and August 20, 2012, plus \$166.55 in costs. Employer responded, objecting only to the requested hourly rates.

On March 20, 2014, ALJ Dorsey awarded Counsel \$12,737.50 for an attorney's fee, reducing his hourly rate to \$350 and awarding the hourly rate of \$150 for the paralegal work, plus the \$166.55 in costs. March 20, 2014 Order Granting Attorney's Fees. On April 9, 2015, the Board affirmed ALJ Dorsey's Fee Order, and on June 10, 2016, the United States Court of Appeals for the Ninth Circuit vacated the Board's decision and remanded the case for proceedings consistent with *Shirrod v. Director, OWCP*, 809 F.3d 1082 (9th Cir. 2015). *Hill v. CLD Pac. Grain*, No. 15-71708 (9th Cir. June 10, 2016), *vacating* BRB No. 14-0281 (Apr. 9, 2015). On November 18, 2016, the Board granted Counsel's motion to remand this case to the OALJ for further proceedings consistent with the opinion of the Ninth Circuit. *Hill v. CLD Pac. Grain*, BRB No. 14-0281 (Nov. 18, 2016) (Order).

On remand, ALJ Jennifer Gee reassigned this case to ALJ Steven Berlin due to ALJ Dorsey's retirement. February 15, 2018 Order Reassigning Case. On August 20, 2018, Counsel filed an Amended Declaration of Attorney Fees and Costs (2018 Declaration) due to the delay in the issuance of an attorney's fee order, and Employer did not file an objection. ALJ Berlin ordered a status update regarding the pending attorney's fee petition on March 31, 2023, and neither party responded. Order for Status Update on Pending Fees; Fee Order at 2.

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<sup>1</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit because Claimant sustained an injury while working for Employer 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).

Subsequently, ALJ Berlin retired, and the case was reassigned to ALJ Larsen (the ALJ). On March 19, 2024, the ALJ issued his Fee Order, awarding Counsel \$18,360.30 in fees and costs. Fee Order at 12-13. The ALJ agreed with ALJ Dorsey's prior finding that Portland, Oregon, is the relevant community for determining Counsel's hourly rate. *Id.* at 4. He found a delay enhancement for Counsel's rates was appropriate but rejected Counsel's request in his 2018 Declaration for an hourly rate of \$525; instead, he awarded Counsel an hourly rate of \$495 based on his expertise, experience, and skill, and the documentation supporting his 2018 Declaration, concluding this was "an appropriate method to compensate [Counsel] for the delay in payment." *Id.* at 10-11. In addition, he awarded an hourly rate of \$175 for the paralegal work to account for the delay. *Id.* at 11-12 n.5. The ALJ noted Counsel did not appeal ALJ Dorsey's award of hours and costs, and he awarded Counsel's request for an additional hour of work in preparing his 2018 Declaration, bringing his total awarded hours to 33.75 hours. *Id.* at 12. Consequently, the ALJ awarded a total fee of \$18,193.75 and \$166.55 in costs. *Id.* at 12-13.

On appeal, Counsel contends the ALJ erred in failing to award a delay enhancement to March 19, 2024, when he issued the fee award.<sup>2</sup> Employer has not responded to this appeal.

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 v. Stevedoring Servs. of Am.*, 557 F.3d 1049, 1055-1056 (9th Cir. 2009); *Anderson v. Director, OWCP*, 91 F.3d 1322, 1325 (9th Cir. 1996). The ALJ may adjust the fee based on a historical rate to reflect its present value, apply current market rates, or employ any other reasonable means to compensate claimant's counsel for the delay. *Allen v. Blutworth Bond Shipyard*, 31 BRBS 95, 96-97 (1997).

Here, the ALJ determined a delay enhancement was warranted because Counsel performed work in this case in 2011 and 2012, and his fee petition had been pending before the OALJ on remand since 2017. Fee Order at 11. The ALJ, however, noted that instead of asking for a delay enhancement based on inflation, Counsel requested a "current rate to compensate for the delay since the completion of this claim." *Id.* (quoting 2018 Declaration at 10). Consequently, the ALJ awarded Counsel an hourly rate based on his 2018 request and the supporting documentation but did not adjust the requested rate for

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<sup>2</sup> We affirm, as unchallenged on appeal, the ALJ's award of 33.75 hours for Counsel's work and his determination of the prevailing market rate in Portland, Oregon for similar services by comparable attorneys. See *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); Fee Order at 10-12.

inflation to the date of his Fee Order. *Id.* Additionally, the ALJ enhanced the hourly rate for paralegal work to \$175 due to the delay. *Id.* at 11-12 n.5.

We agree with Counsel that the ALJ erred by not adjusting the requested hourly rates to account for the extended delay before the OALJ. Counsel's Brief at 2-4. Counsel began working on this case in 2011 and filed his initial fee petition on August 21, 2012, and ALJ Dorsey awarded an attorney's fee on March 20, 2014. After Counsel's appeals to the Board and the Ninth Circuit, the Board remanded the case to the OALJ on November 18, 2016, the OALJ received the file on February 15, 2017, and the ALJ issued his Fee Order on March 19, 2024. Fee Order at 1-2. While *Anderson* provides an attorney is not entitled to an enhancement for delay caused by an appeal of the fee award, almost twelve years passed between Counsel's initial fee petition and the ALJ's March 19, 2024 Fee Order, the fee petition was before the OALJ on remand for seven years, and Counsel's appeals to the Board and the Ninth Circuit account for less than three of those total years. *See Anderson*, 91 F.3d at 1325 n.3. Further, Counsel's request for a delay enhancement was unopposed, the extended delay before the OALJ on remand was not due to Counsel's actions, and the ALJ agreed with Counsel that a delay enhancement was warranted. Fee Order at 2, 11. Thus, the ALJ erred in not awarding a delay enhancement up to when he issued his Fee Order in 2024. *See Anderson*, 91 F.3d at 1325 (determining a fourteen-year delay was "egregious" and ordering a delay enhancement); *see also Hill v. CLD Pac. Grain*, BRB No. 14-0281 (July 29, 2025) (Order) (awarding Counsel an enhanced fee for his work performed before the Board in his prior appeal of the present case due to an eight-year delay in payment). On remand, the ALJ must adjust the hourly rates for Counsel and paralegal work for inflation to 2024. Counsel does not appeal any other aspect of the ALJ's order.

Accordingly, we affirm in part and vacate in part the ALJ's Attorney Fee Order on Remand and remand this case for further consideration consistent with our opinion.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

GLENN E. ULMER  
Acting Administrative Appeals Judge