

BRB No. 09-0271 BLA
Case No. 07-BLA-5224

LARRY MAGGARD)
)
Claimant-Respondent)
)
v.)
)
INTERNATIONAL COAL GROUP,)
KNOTT COUNTY, LLC)
)
and)
) DATE ISSUED: 11/08/2010
)
AMERICAN INTERNATIONAL SOUTH)
INSURANCE GROUP)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) ORDER

Claimant's counsel has filed an amended petition requesting a fee for services performed in this appeal pursuant to 20 C.F.R. §802.203. Claimant's counsel requests a total fee of \$1,100.00 for 3.25 hours of legal services at an hourly rate of \$300.00 (Joseph E. Wolfe), and 1.25 hours of legal services at an hourly rate of \$100.00 (legal assistants). Employer challenges the requested hourly rate, contending that claimant's counsel has not demonstrated that his requested hourly rate is in line with the applicable market rate.

Procedural History

In his initial fee petition, claimant's counsel requested a total fee of \$1,100.00 for 3.25 hours of legal services at an hourly rate of \$300.00 (Joseph E. Wolfe), and 1.25 hours of legal services at an hourly rate of \$100.00 (legal assistants). However, by Order dated April 15, 2010, the Board stated that claimant's counsel's fee petition was "incomplete on its face" because it did not contain "the normal billing rate for each person who

performed services on behalf of the claimant.” *Maggard v. Int’l Coal Group, Knott County, LLC*, BLR , BRB No. 09-0271 BLA, slip op. at 4 (Apr. 15, 2010). The Board further stated that claimant’s counsel did not provide sufficient information relevant to the market rate for services in the geographic jurisdiction of the litigation. *Id.* at 3-4 (citing *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 290 (4th Cir. 2010); *Gonter v. Hunt Valve Co.*, 510 F.3d 610, 617 (6th Cir. 2007)).

Because claimant’s counsel did not provide a complete fee application, the Board granted him thirty days in which to submit an amended fee petition. The Board instructed claimant’s counsel that the amended fee petition must include, *inter alia*, the professional status of each person for whose work a fee is claimed, and the normal billing rate of each person who performed services on behalf of the claimant. 20 C.F.R. §802.203(d)(2)(4). Claimant’s counsel was also instructed to submit evidence of an applicable market rate.

Claimant’s Counsel’s Amended Fee Petition

Claimant’s counsel submitted an amended fee petition on July 22, 2010. Employer contends that claimant’s counsel has not made any declaration regarding his normal billing rate. Employer’s Response Brief at 2. We disagree. In the amended petition, claimant’s counsel avers that his normal billing rate is \$300.00 per hour. 20 C.F.R. §802.203(d)(4); Amended Fee Petition at 1.

We further reject employer’s contention that claimant’s counsel has not provided sufficient information relevant to the applicable market rate. In his amended fee petition, claimant’s counsel provides an extensive list of black lung cases from 2006 to 2008, in which he was awarded an hourly rate of \$300.00. In *Cox*, the United States Court of Appeals for the Fourth Circuit recognized that evidence of fees received in the past is an appropriate method of establishing a market rate. *Cox*, 602 F.3d at 290. In support of his requested hourly rate, claimant’s counsel also provides evidence of his expertise and experience in the field of black lung litigation. *See Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 228, 43 BRBS 67, 71 (CRT) (4th Cir. 2009); *B & G Mining, Inc. v. Director, OWCP [Bentley]*, 522 F.3d 664-65, 24 BLR 2-106, 2-124 (6th Cir. 2008). We, therefore, find that claimant’s counsel has provided sufficient evidence of a market rate in his geographic area for an attorney of his expertise and experience, for appellate work before the Board. Consequently, we approve the requested hourly rate of \$300.00. We find the 3.25 hours of attorney services to be reasonably commensurate with the necessary work performed in defense of employer’s appeal, and we award a fee for these services. 20 C.F.R. §802.203(e).

Finally, despite the Board's previous instruction to do so, claimant's counsel has not identified the training, education, and experience of his legal assistants. *Maggard*, slip op. at 6 n.11. Because claimant's counsel has failed to provide this required information, *see* 20 C.F.R. §802.203(d)(2), we disallow the requested fee for the 1.25 hours of legal services performed by his legal assistants.

Accordingly, we award claimant's counsel an attorney's fee of \$975.00, for 3.25 hours of legal services at an hourly rate of \$300.00, to be paid directly to claimant's counsel by employer. 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §802.203.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge