

BRB No. 94-3974 BLA

JOSEPH M. KALINOWSKI)

)
Claimant-Petitioner)

)
v.)

) DATE ISSUED:
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

)
Respondent) DECISION and ORDER

Appeal of the Supplemental Award-Fees For Legal Services of Stuart C. Glassman, District Director, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.
Jill M. Otte (Thomas S. Williamson, Jr., Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Claimant's¹ counsel (counsel) appeals the Supplemental Award-Fees for Legal Services of District Director Stuart C. Glassman awarding attorney's fees on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). Counsel filed a fee petition requesting \$877.50 for 9.75 hours of legal services at an hourly rate of

¹Claimant is Joseph Kalinowski who was awarded benefits in a Decision and Order dated June 3, 1994.

\$90.00. The district director issued a supplemental award of fees finding counsel entitled to \$707.50 for 1.25 hours of service at \$80.00 per hour and 6.75 hours of service at \$90.00 per hour. The district director disallowed 1.75 hours of claimed services at \$90.00 per hour.

On appeal, counsel contends that the district director erred in reducing the hourly rate requested and in disallowing 1.25 hours of claimed services.² The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to affirm the district director's finding as to the hourly rate and 1.50 hours of the disallowed time and to modify the award to allow an additional .25 hours of service at \$90.00 per hour.

The award of an attorney's fee is discretionary and will be upheld on appeal unless shown by the challenging party to be arbitrary, capricious, or an abuse of discretion. See *Abbott v. Director, OWCP*, 13 BLR 1-15 (1989), citing *Marcum v. Director, OWCP*, 2 BLR 1-894 (1980).

Counsel first contends that the district director erred in reducing the hourly fee for work performed prior to June 30, 1992 from \$90.00 to \$80.00. As counsel contends, the district director provides no explanation for reducing the hourly rate by \$10.00. Supplemental Award at 1; see *Barr v. Director, OWCP*, 7 BLR 1-367 (1984); *Robel v. Director, OWCP*, 7 BLR 1-358 (1984); *Marcum, supra*. Further, counsel states that a fee of \$85.00 per hour is appropriate as that amount has been awarded to her by the district director on prior occasions. Counsel's Brief at 3; Counsel's Exhibit "C." We agree with counsel's contention and modify the supplemental award to allow a fee of \$85.00 per hour for services provided prior to June 30, 1992 for an additional award of \$6.25.

Counsel next contends that the district director erred in disallowing one hour of service provided at an hourly rate of \$90.00 for travel to and from an informal conference. Counsel requested four hours of service at a rate of \$90.00 for travel to the conference, time spent in the conference, and the return trip. The district director erroneously reduced the time allowed for travel by one hour without providing an explanation. Supplemental Award at 2; see *Barr, supra*; *Robel, supra*; *Marcum, supra*. Therefore, we modify the award to allow an additional \$90.00 for one hour of

²We affirm the district director's disallowance of .50 hours of service at \$90.00 per hour, which he found to have been performed after the case was sent to Office of Administrative Law Judges, as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

service on October 21, 1992.

Finally, counsel contends that the district director erred in disallowing .25 hours of service requested for a telephone call from claimant on October 29, 1992 at a rate of \$90.00 per hour. The district director disallowed the time because he found it to be duplicative as the subject of the telephone call was previously discussed in a meeting on October 23, 1992. However, as the Director states, the disallowed charge was for a phone call from claimant to discuss witnesses needed to complete forms received at the previous meeting. Director's Brief at 3; Counsel's exhibits "A" and "C"; see *Lanning v. Director, OWCP*, 7 BLR 1-314 (1984). Thus, we modify the Supplemental Award to allow an additional \$22.50 for .25 hours of service performed at an hourly rate of \$90.00.

Accordingly, the district director's Supplemental Award-Fees for Legal Services is affirmed in part and modified in part to allow an additional award of \$118.75.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge