

BRB No. 05-0566 BLA

WILLIS R. WELLMAN)
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 Claimant)
)
 v.) DATE ISSUED: 06/15/2007
)
 CHAPPERAL COAL CORPORATION)
)
 and)
)
 AMERICAN BUSINESS & MERCANTILE)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest) DECISION and ORDER

Appeal of the Supplemental Decision and Order Granting Attorney Fee and Order Denying Employer's Motion for Reconsideration of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

W. William Prochot (Greenburg Traurig, LLP), Washington, D.C., for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Granting Attorney Fee and Order Denying Employer's Motion for Reconsideration (02-BLA-5418) of Administrative Law Judge Alice M. Craft 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).

In a Decision and Order Granting Benefits issued on August 6, 2004, the administrative law judge allowed claimant's counsel thirty days to file an application for attorney's fees, and granted the parties ten days following service of the fee application within which to file any objections. Claimant's counsel submitted a fee petition on September 1, 2004, requesting a fee in the amount of \$19,950.00, for 59.75 hours of work at a rate of \$250.00 per hour, 30.50 hours of work at a rate of \$125.00 per hour, and 16.00 hours of work at a rate of \$75.00 per hour. Employer neither objected to the petition, nor requested an extension of time within which to file its objections. Upon considering the fee petition, the administrative law judge found that no objections to the petition had been filed, and that the requested fee was reasonable in light of "the nature of the issues involved, the degree of skill with which the Claimant was represented, the amount of time and work involved, and other relevant factors," in accordance with 20 C.F.R. §725.366(b). Accordingly, in a Supplemental Decision and Order Granting Attorney Fee issued on September 27, 2004, the administrative law judge approved the requested fee.

Subsequently, employer sought reconsideration of the attorney fee award pursuant to 20 C.F.R. §725.366(d), raising objections to both the requested hourly rates and the number of compensable hours claimed. The administrative law judge denied reconsideration by Order issued March 16, 2005.

On appeal, employer asserts that the administrative law judge erred in denying employer's request for reconsideration and recites its objections to the fee award. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a brief in this appeal.

An award of attorney's fees is discretionary and will be upheld unless shown by the challenging party to be arbitrary, capricious, or an abuse of discretion. *Abbott v. Director, OWCP*, 13 BLR 1-15, 1-16 (1989), citing *Marcum v. Director, OWCP*, 2 BLR 1-894 (1980).

Employer contends that the administrative law judge erred in denying employer's request for reconsideration on the grounds that, by failing to respond to the fee petition when filed, employer waived its objections to the fee. We disagree. In denying employer's motion for reconsideration, the administrative law judge noted that employer's response to claimant's fee petition, served on September 1, 2004, was due on September 16, 2004; however, as of the issuance of the administrative law judge's fee award on September 27, 2004, approximately ten days following the deadline for responses, employer had not filed any response to the petition. The administrative law judge further found, contrary to employer's contentions on reconsideration, that while 20 C.F.R. §725.366(d) allowed employer to seek reconsideration of the fee award, it did not relieve employer of its obligation to file a timely response to the fee petition when filed.

In addition, the administrative law judge rejected employer's argument that ten days to respond to the fee petition was inadequate, in light of the fact that ten days is the amount of time allowed for answers to motions set by 29 C.F.R. §18.6(b) of the Rules of Practice and Procedure before the Office of Administrative Law Judges .

Employer has not established that the administrative law judge's findings constitute an arbitrary or capricious act or an abuse of her discretion. The record reflects that employer neither objected to the fee petition within the ten days allowed by the administrative law judge, nor requested an extension of the time period for filing objections. The record further reflects that the administrative law judge waited an additional ten days beyond the deadline set for responses to the fee petition, to rule on the petition. Moreover, the administrative law judge's fee award reflected proper consideration of the factors set forth at 20 C.F.R. §725.366(b). Finally, the administrative law judge fully addressed employer's arguments on reconsideration, and explained why she found them without merit. On these facts, we conclude that the administrative law judge acted soundly within her discretion in finding that employer had waived its objections to the fee petition. *See Abbott*, 13 BLR at 1-16.

Accordingly, we affirm both the Supplemental Decision and Order Granting Attorney Fee and Order Denying Employer's Motion for Reconsideration.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge