



BRB Nos. 14-0367 BLA
and 11-0324 BLA
Case No. 09-BLA-5923

NORMAN C. BARNES)	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED: 03/25/2016
)	
COWIN & COMPANY, INCORPORATED)	
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	ORDER

Claimant’s counsel, Abigail P. van Alstyne, has filed itemized statements requesting fees for services performed before the Board in the above-referenced appeals. Pursuant to 20 C.F.R. §802.203, claimant’s counsel requests a total fee of \$14,875.00, representing 59.5 hours of legal services, at an hourly rate of \$250.00 for work performed in two appeals. For work performed in BRB No. 14-0367 BLA, claimant’s counsel requests a fee of \$8,875.00, representing 35.5 hours of legal services at an hourly rate of \$250.00. For work performed in BRB No. 11-0324 BLA, claimant’s counsel requests a fee of \$6,000.00, representing 24.00 hours of legal services, at an hourly rate of \$250.00. Employer has responded, and objects to the number of hours requested in each fee petition.

In BRB No. 14-0367 BLA, employer objects to counsel’s request for one-quarter hour, in each of five entries, for the receipt of documents.¹ As the quarter-hour increment

¹ Specifically, employer objects to the quarter-hour spent on July 21, 2014, for receiving employer’s notice of appeal; on August 18, 2014, for receiving the notice of

is the billing increment set forth in the applicable regulation, and claimant's counsel reasonably billed one-quarter hour for each of these entries, we reject employer's objection and award the time requested. 20 C.F.R. §802.203(d)(3); *E. Associated Coal Corp. v. Director, OWCP [Gosnell]*, 724 F.3d 561, 576, 25 BLR 2-359, 2-383-84 (4th Cir. 2013); *B & G Mining, Inc. v. Director, OWCP [Bentley]*, 522 F.3d 657, 666, 24 BLR 2-106, 2-127 (6th Cir. 2008).

Employer also objects to the amount of time that claimant's counsel spent drafting a response brief in BRB No. 14-0367 BLA, asserting that it should not have taken counsel in excess of twenty-eight hours² to draft the brief, given her experience and her hourly rate of \$250.00. We agree. A review of the fee petition reflects that, in seven consecutive entries from October 21, 2014 through November 3, 2014, claimant's counsel spent 31.75 hours on activities relating to the drafting of the response brief. The Board finds this amount of time to be excessive, given claimant's counsel's expertise³ and her familiarity with the issues in this case, which was before the Board for the second time when counsel drafted the response brief. Thus, we disallow 7.75 hours, and award claimant's counsel 24.00 hours for time spent drafting the response brief in BRB No 14-0367 BLA. *Bentley*, 522 F.3d at 666-67, 24 BLR at 2-126-27.

The Board otherwise finds the requested fee in BRB No. 14-0367 BLA to be reasonable in light of the necessary work performed before the Board. Therefore, we award claimant's counsel a fee of \$6,937.50, for 27.75 hours of legal services at an hourly rate of \$250.00.

new counsel from the Director, Office of Workers' Compensation Programs; on August 29, 2014, for receiving the Board's acknowledgment of the appeal; on October 3, 2014, for receiving the Board's Order deferring a ruling on counsel's prior fee petition; and on December 15, 2014, for receiving the Board's Order granting employer an extension of time to file a reply brief.

² Employer states that it cannot ascertain the exact amount of time that claimant's counsel spent in drafting the response brief, because the fee petition "includes other activities" with some of the entries related to drafting the response brief. Employer's Objection to Attorney's Fee Petition in BRB No. 14-0367 BLA at 2.

³ Claimant's counsel identifies herself as a "thirty-two-year practicing attorney with substantial civil and administrative litigation," experience in state and federal courts, and who has been awarded \$250.00 per hour "by adjudicators at all levels." Petition for Attorney's Fees in BRB No. 14-0367 BLA at 2 (unpaginated).

With regard to BRB No. 11-0324 BLA, employer objects to 12.75 hours of the 24.00 hours claimed, contending that time spent on claimant's response to Employer's Motion to Suspend the Briefing Schedule should be denied, since claimant's brief was an untimely response to the motion, and "addressed substantive issues that had nothing to do with [employer's motion to suspend] the briefing schedule." Employer's Objection to Attorney's Fee Petition in BRB No. 11-0324 BLA at 3. Claimant's counsel responds that she drafted a brief in support of the administrative law judge's award of benefits because she was uncertain of how to proceed on appeal, when employer moved to suspend the briefing schedule instead of filing its petition for review. Claimant's Response at 1-2 (unpaginated). Claimant's counsel further explains that "her time sheets unfortunately labeled the memorandum brief as being in response to [e]mployer's motion to suspend [the] briefing [schedule], but a reading of the brief itself shows otherwise." *Id.* at 2-3 (unpaginated).

After our review of "Claimant's Response to Operator's Motion to Suspend Briefing Schedule and To Issues Raised in Operator's Post-Hearing Brief," we accept claimant's counsel's reasonable explanation, notwithstanding employer's objection. We therefore award a fee for the entire 12.75 hours requested for drafting claimant's response to employer's Motion to Suspend the Briefing Schedule, which served as claimant's response brief. Employer did not object to claimant's response as untimely when it was filed, and claimant's counsel reasonably regarded the work as necessary to establish entitlement. *See Lanning v. Director, OWCP*, 7 BLR 1-314, 1-316 (1984). Moreover, we find the total time requested for claimant's response brief, in the amount of 18.25 hours (12.75 hours for the response to employer's Motion to Suspend the Briefing Schedule and in support of the administrative law judge's award of benefits, plus 5.50 hours for a supplemental response brief), to be reasonable. The Board finds the requested fee in BRB No. 11-0324 BLA to be reasonable in light of the necessary services performed, and thus approves a fee of \$6,000.00, for 24.00 hours of legal services at an hourly rate of \$250.00.

In sum, we disallow 7.75 hours of services in BRB No. 14-0367 BLA, and we grant all the hours of services requested in BRB No. 11-0324 BLA. Apart from the time disallowed in BRB No. 14-0367 BLA, we find the requested fees to be reasonable in light of the services performed in each appeal. Accordingly, claimant's counsel is awarded a total fee of \$12,937.50, for 51.75 hours of legal services at an hourly rate of \$250.00, 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.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge