

BRB No. 97-1464 BLA

JOSEPH BARTOS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Supplemental Award of Fees for Legal Services of Jack Lewis Geller, District Director, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

J. Matthew McCracken (Marvin Krislov, Deputy Solicitor for National Operations; 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, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Counsel for claimant (counsel) appeals the Supplemental Award of Fees for Legal Services of District Director Jack Lewis Geller 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 requested approval of a fee of \$701.25 for 9.25 hours of legal services rendered on claimant's behalf at an hourly rate of \$75.00. The district director issued a supplemental award granting a fee of \$56.25 for 0.75 hours of legal services provided at an hourly rate of \$75.00. Counsel specifically challenges the district director's disallowance of eight hours of services performed in claimant's prior claim. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the district director's award.

An award of an attorney fee is discretionary and will be sustained by the Board unless it is arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See Bennett v. Director, OWCP*, 17 BLR 1-72 (1992); *Abbott v. Director, OWCP*, 13 BLR 1-15 (1989).

Claimant filed an application for benefits on April 12, 1983, which was denied by the district director on August 3, 1983. Director's Exhibits 1, 32. Claimant did not appeal the denial and no further action was taken on this claim. Counsel apparently performed eight hours of legal services in connection with this claim.

Claimant filed a duplicate claim on May 20, 1986, which was denied by the district director on August 2, 1986. Director's Exhibits 2, 33. By letter dated September 5, 1986, counsel entered her appearance as claimant's representative in the duplicate claim. Director's Exhibit 37. Benefits were ultimately awarded on the duplicate claim in a Decision and Order dated March 26, 1997.

Counsel contends that she should be awarded the fee requested for eight hours of legal services performed in conjunction with claimant's 1983 claim, which was denied. Section 28 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §928, as incorporated into the Black Lung Benefits Act at Section 422(a), 30 U.S.C. §932(a), provides for the award of attorney fees. In order to receive compensation for legal services performed on a claimant's behalf, counsel must successfully prosecute the claim. 30 U.S.C. §928(a), as incorporated 30 U.S.C. §932(a); *Yates v. Harman Mining Co.*, 12 BLR 1-175 (1989), *reaff'd on recon. en banc*, 13 BLR 1-56 (1989); *Markovich v. Bethlehem Mines Corp.*, 11 BLR 1-105 (1987). The Board has held that an attorney fee request will be rejected for work performed with respect to a prior claim which was denied, even though claimant was subsequently successful in his pursuit of benefits on a duplicate claim. *Broughton v. Director, OWCP*, 13 BLR 1-35 (1989). Consequently, the district director properly disallowed the fee requested for eight hours of legal services performed in conjunction with the pursuit of claimant's prior claim which was filed and denied in 1983.

Accordingly, the district director's Supplemental Award of Fees for Legal Services is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge