



BRB No. 15-0116 BLA

DONALD GENE ROBBINS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
U.S. STEEL MINING COMPANY, LLC)	DATE ISSUED: 11/03/2015
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Proposed Order - Supplemental Award - Fee for Legal Services of Tyler L. West, Claims Examiner, Office of the District Director, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Howard G. Salisbury, Jr. (Kay Casto & Chaney PLLC), Charleston, West Virginia, for employer.

Sarah M. Hurley (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; 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, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Proposed Order - Supplemental Award - Fee for Legal Services of Claims Examiner Tyler L. West, issued on behalf of the district director, on a

petition for fees for legal services performed in securing an award of benefits on a miner's claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

Claimant filed his claim on June 28, 2010, and was awarded benefits by the district director on March 9, 2011. Director's Exhibits 2, 21. Employer initially requested a hearing, Director's Exhibit 23, but later withdrew its contest to claimant's entitlement and accepted liability. On December 18, 2013, Administrative Law Judge Paul R. Almanza cancelled the hearing and remanded the case to the district director for payment of benefits. On November 20, 2014, claimant's counsel submitted a fee petition to the district director, requesting a fee of \$4,725.00 for work performed from July 15, 2010 to April 12, 2011, representing 13.50 hours of legal services by Joseph E. Wolfe at an hourly rate of \$300 and 6.75 hours of services by legal assistants at an hourly rate of \$100. Claimant further requested reimbursement of expenses in the amount of \$87.95. Employer objected to the fee petition as untimely, and challenged counsel's requested hourly rate. After considering "the complexity of the issues, the qualifications of the representative, and the level at which the claim was decided," the district director reduced the hourly rate for Mr. Wolfe to \$250.00 and reduced the hourly rate for the legal assistants to \$50.00, noting that "[t]he work was performed in a routine case which did not call for special ability and effort." Proposed Order at 1. The district director approved the number of hours and expenses requested, and awarded a fee of \$3,712.50 for 13.50 hours of legal services performed at an hourly rate of \$250.00 and 6.75 hours of legal assistant services performed at an hourly rate of \$50.00. The district director also granted \$87.95 in costs. Accordingly, the district director ordered employer to pay a fee of \$3,712.50, plus \$87.95 for costs, for a total award of \$3,800.45 to claimant's counsel.

On appeal, employer challenges the fee award, asserting that the district director did not address its objection to the timeliness of the fee petition, and erred in treating the fee petition as timely filed. Claimant responds, urging the Board to affirm the award of attorney fees. The Director, Office of Workers' Compensation Programs (the Director), responds, asserting that the district director's disposition of counsel's fee petition was appropriate and should be affirmed. Employer has filed a reply brief in support of its position.

The amount of an award of an attorney fee is discretionary and will be upheld on appeal unless shown by the challenging party to be arbitrary, capricious, or an abuse of discretion. *Jones v. Badger Coal Co.*, 21 BLR 1-102, 1-108 (1998) (en banc); *Abbott v. Director, OWCP*, 13 BLR 1-15, 1-16 (1989).

Employer argues that the district director failed to address its objection to the fee petition as untimely filed, and erred in accepting the fee petition as timely. Employer asserts that a reasonable time limit for filing a fee petition should be implied, and that an

“eleven month time lapse” before filing “has surely exceeded any such reasonable time limit.” Employer’s Brief at 6. Employer asserts that because the district director failed to set a time limit for the filing of the fee petition, the Board should imply a reasonable time limit and reverse the fee award as untimely. Employer’s Brief at 5-6; Reply Brief at 2-6. We disagree.

As the Director correctly notes, neither the Act, nor the regulations, sets a time period during which fee petitions must be filed with the district director. *See* 33 U.S.C. §928. The regulations permit the individual district director considering the fee request to set the time limit for the filing of a fee petition. *See* 20 C.F.R. §725.366(a).¹ In addition, the Board has held that the loss of an attorney fee is a harsh result that should not be imposed except in the most extreme circumstances. *Paynter v. Director, OWCP*, 9 BLR 1-190, 1-191 (1986). While we agree with employer that the district director should have addressed employer’s concern that the fee petition was untimely, any error is harmless, as this fee petition did not violate any prescribed time limits. *See Bankes v. Director, OWCP*, 765 F.2d 81, 82 (6th Cir. 1985)(“It is within the discretion of the deputy commissioner to set the time limitation for the filing of a fee application for services performed before him in a black lung benefits case.”). Because employer has demonstrated no abuse of discretion by the district director, we affirm the district director’s attorney fee award in the amount of \$3,712.50, plus expenses of \$87.95.

¹ Section 725.366(a) provides, in pertinent part, that the fee petition be filed “within the time limits allowed by the district director.” 20 C.F.R. §725.366(a).

Accordingly, the district director's Proposed Order - Supplemental Award - Fee for Legal Services is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge