

DORA STANHOPE)	
(Widow of ENOS STANHOPE))	
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Claimant-Petitioner)	
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v.)	
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ELECTRIC BOAT CORPORATION)	DATE ISSUED: 12/20/2010
)	
Self-Insured)	
Employer-Respondent)	ORDER

Claimant’s counsel has filed a petition for an attorney’s fee for work performed before the Board in this appeal. 20 C.F.R. §802.203. Claimant’s counsel requests a fee of \$7,745, representing 24.25 hours of attorney services at an hourly rate of \$315¹ and 1.25 hours of paralegal services at an hourly rate of \$85. The fee petition itemizes work performed before the Board from August 15, 2006 to October 20, 2006, plus review of the Board’s decision on July 2, 2007.² Employer has filed objections, contending that the hourly rates are excessive and that a reasonable hourly rate for the attorney services is \$250. Counsel has filed a reply to employer’s objections, presenting additional argument and evidence in support of the requested rates.

Claimant’s counsel is entitled to a reasonable attorney’s fee payable by employer for successfully prosecuting her claim, pursuant to Section 28 of the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act), and 20 C.F.R. §802.203, which implements Section 28 with respect to services performed

¹ Claimant’s lead attorney, Carolyn P. Kelly, performed 21.75 hours of the time itemized for attorney services and her partner, Attorney Matthew Shafner, performed the remaining 2.5 hours of the itemized attorney time.

² The Board’s decision affirming a denial of benefits was appealed to the United States Court of Appeals for the Second Circuit. The court reversed the denial of benefits and remanded the case. *Stanhope v. United States Dep’t of Labor*, 310 F.App’x 459 (2^d Cir. 2009). On remand, the administrative law judge awarded benefits and her May 2010 decision was not appealed.

before the Board. Section 802.203(d)(4) of the Board's regulations provides that a fee application "shall be complete in all respects" and must contain, *inter alia*, the following information:

The normal billing rate for each person who performed services on behalf of the claimant. The rate awarded by the Board shall be based on what is reasonable and customary in the area where the services were rendered for a person of that particular professional status.

20 C.F.R. §802.203(d)(4). The regulations further provide that:

Any fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, the amount of benefits awarded, and, when the fee is to be assessed against the claimant, shall take into account the financial circumstances of the claimant. A fee shall not necessarily be computed by multiplying time devoted to work by an hourly rate.

20 C.F.R. §802.203(e).

The United States Supreme Court has held that the lodestar method, in which the number of hours reasonably expended in preparing and litigating the case is multiplied by a reasonable hourly rate, presumptively represents a "reasonable attorney's fee" under a federal fee-shifting statute, such as the Longshore Act.³ See *Perdue v. Kenny A.*, 130 S.Ct. 1662 (2010); *City of Burlington v. Dague*, 505 U.S. 557 (1992); *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546 (1986); *Blum v. Stenson*, 465 U.S. 886 (1984). An attorney's reasonable hourly rate is "to be calculated according to the prevailing market rates in the relevant community." *Blum*, 465 U.S. at 895; see also *Kenny A.*, 130 S.Ct. at 1672. The burden falls on the fee applicant to produce satisfactory evidence "that the requested rates are in line with those prevailing in the community for similar services by lawyers of comparable skill, experience, and

³ A "reasonable attorney's fee" is calculated in the same manner in all federal fee-shifting statutes, including the Longshore Act. See *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992); *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 227 n.8, 43 BRBS 67, 70 n.8(CRT) (4th Cir. 2009); *Christensen v. Stevedoring Services of America*, 557 F.3d 1049, 1054, 43 BRBS 6, 8-9(CRT) (9th Cir. 2009); *B&G Mining, Inc. v. Director, OWCP*, 522 F.3d 657, 662 (6th Cir. 2008); *Beckwith v. Horizon Lines, Inc.*, 43 BRBS 156, 159 (2009).

reputation.” *Blum*, 465 U.S. at 896 n.11; *Christensen v. Stevedoring Services of America*, 557 F.3d 1049, 1053, 43 BRBS 6, 8(CRT) (9th Cir. 2009);⁴ *see also Westmoreland Coal Co. v. Cox*, 602 F.3d 276 (4th Cir. 2010); *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009); *B&G Mining, Inc. v. Director, OWCP*, 522 F.3d 657 (6th Cir. 2008).

In this case, while claimant’s counsel has produced some evidence in support of the requested hourly rates, the fee petition, as supplemented by counsel’s reply to employer’s objections to the fee request, does not provide the Board with sufficient information to determine reasonable hourly rates in this case.⁵ *See Maggard v. Int’l Coal Group, Knott County, LLC*, __ BLR __, BRB No. 09-0271 BLA (Apr. 14, 2010) (attorney fee order in a case arising under the Black Lung Benefits Act, 30 U.S.C. §901 *et seq.*, to which Section 28 of the Longshore Act applies). As was the case in *Maggard*, the fee petition submitted by claimant’s counsel in this case does not contain “the normal billing rate for each person who performed services on behalf of the claimant.” 20 C.F.R. §802.203(d)(4). Although claimant’s counsel identifies the hourly rates sought in this case, claimant’s counsel has not identified the normal billing rate for herself, for Mr. Shafner, or for her paralegal. As claimant’s counsel has failed to make any declaration

⁴ In *Christensen*, the court recognized that there is no private market for attorney’s fees under the Longshore Act and thus it is necessary that counsel be awarded fees “commensurate with those which they could obtain by taking other types of cases.” *Christensen*, 557 F.3d at 1053-1054, 43 BRBS at 8(CRT)(internal citations and quotations omitted); *see also Beckwith v. Horizon Lines, Inc.*, 43 BRBS 156, 157 (2009).

⁵ Employer cites the Board’s fee award in another case, *Springer v. Electric Boat Corp.*, BRB No. 07-580 (Aug. 7, 2008) (unpublished Order), in which the Board reduced Ms. Kelly’s requested hourly rate of \$285 to \$250. Employer therefore proposes \$250 as a reasonable hourly rate for the attorney services performed in this case. We do not agree that the hourly rate awarded to claimant’s counsel in *Springer* is dispositive of the determination of a reasonable rate in this case. While the Board may consider the rates awarded in recent cases as some inferential evidence of the prevailing market rates in the relevant community, prior fee awards are not necessarily dispositive of the hourly rate determination in a particular case. Rather, the Board must also consider the evidence submitted by the parties regarding prevailing market rates. *See Holiday*, 591 F.3d 219, 43 BRBS 67(CRT); *Christensen*, 557 F.3d 1049, 43 BRBS 6(CRT); *Van Skike v. Director, OWCP*, 557 F.3d 1041, 43 BRBS 11(CRT) (9th Cir. 2009); *B&G Mining, Inc.*, 522 F.3d 657; *Beckwith v. Horizon Lines, Inc.*, 43 BRBS 156 (2009); *see generally Patterson v. Balsamico*, 440 F.3d 104 (2^d Cir. 2006); *Farbotko v. Clinton County of New York*, 433 F.3d 204 (2^d Cir. 2005).

regarding the normal hourly rates that she seeks for cases similar to this one, this defect must be cured before the Board addresses counsel's fee petition.⁶

Furthermore, as in *Maggard*, claimant's counsel has not provided sufficient information relevant to the prevailing market rates in the relevant community. In her initial fee petition, claimant's counsel summarily averred that the market hourly rates for attorneys with specialized legal practices in southeastern Connecticut range from \$200 to \$500 and that the market hourly rates for paralegal services range from \$65 to \$100. In her reply to employer's objections, claimant's counsel states that she has over 20 years of experience and has litigated hundreds of Longshore Act cases before the Office of Administrative Law Judges and numerous cases before the Board and the United States Court of Appeals for the Second Circuit.⁷ Claimant's counsel avers that the requested hourly rate of \$315 for attorney services is supported by the *Laffey* Matrix, as modified to account for local labor costs in Hartford, Connecticut.⁸ Claimant contends in this regard that the *Laffey* Matrix was cited with approval in the Board's decision in *Beckwith v. Horizon Lines, Inc.*, 43 BRBS 156 (2009). In *Beckwith*, the Board held that a Washington, D.C.-based attorney who participated in the case only at the Board level, and thus had no contacts with the local area where the claimant resided, was entitled to the prevailing market rate in Washington, D.C. *Beckwith*, 43 BRBS at 158. Stating that the claimant's attorney had "demonstrated the appropriateness of the use of the *Laffey* Matrix in fee shifting statutes where the relevant geographic area is the District of Columbia," the Board used the Matrix as a guide in determining the claimant's attorney's hourly rate. *Id.* at 159. *See also Holiday*, 591 F.3d 219, 43 BRBS 67(CRT); *Holiday v.*

⁶ In support of the requested hourly rates, claimant's counsel has noted the complex legal and factual issues involved in this case and the benefits obtained for claimant as well as counsel's extensive experience litigating longshore cases before the Office of Administrative Law Judges, the Board, and the United States Court of Appeals for the Second Circuit. These are relevant factors that may be considered by the Board in determining a reasonable hourly rate for the work of each person identified in the fee petition. *See Holiday*, 591 F.3d at 228, 43 BRBS at 71(CRT); *Christensen*, 557 F.3d at 1054 n.5, 43 BRBS at 9 n.5(CRT); 20 C.F.R. §802.203(d)(2), (e).

⁷ No specific information was provided regarding Mr. Shafner's professional qualifications.

⁸ As an attachment to her reply to employer's objections, claimant's counsel submitted a version of the *Laffey* Matrix that purportedly adjusts for local labor costs in various locations including Hartford, Connecticut; this Matrix shows an hourly rate of \$378 for a Hartford attorney with 20 plus years of experience. We note that counsel's office is in the New London/Groton area, and not Hartford.

Newport News Shipbuilding & Dry Dock Co., __ BRBS __, BRB No. 06-0345 (Aug. 11, 2010).⁹

Although claimant’s counsel broadly interprets *Beckwith* to support reliance on the *Laffey Matrix* in this case involving a Connecticut-based attorney, the Board stated in both *Beckwith* and *Holiday* that under the facts of those cases the Washington, D.C.-based attorney, who participated in the cases only at the Board level, had demonstrated the appropriateness of the *Laffey Matrix* as evidence of the prevailing market rates in Washington, D.C. See *Holiday*, slip op. at 2-4; *Beckwith*, 43 BRBS at 158-159. In this case, claimant’s counsel has not demonstrated that the *Laffey Matrix*, which has been accepted as an indicator of the hourly rates of litigation attorneys in Washington, D.C., is a reliable measure of the prevailing market rates in Connecticut or other locations outside of Washington, D.C. See *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 454 (9th Cir. 2010) (stating that “just because the *Laffey Matrix* has been accepted in the District of Columbia does not mean that it is a sound basis for determining rates elsewhere, let alone in a legal market [San Francisco] 3,000 miles away.”); *Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 245 (4th Cir. 2009); *Grissom v. The Mills Corp.*, 549 F.3d 313,

⁹ The issue of the appropriateness of the use of the *Laffey Matrix* was presented to the United States Court of Appeals for the Fourth Circuit in *Holiday*, 591 F.3d 219, 43 BRBS 67(CRT), which was decided a month after the Board’s decision in *Beckwith*. The claimant in *Holiday* was represented at the Board level by the same Washington, D.C.-based attorney involved in *Beckwith*. In its decision in *Holiday*, the Fourth Circuit addressed the claimant’s counsel’s contention that Washington, D.C. is the appropriate geographic market and that the Board was constrained to consider the *Laffey Matrix*. The court rejected the contention, stating that “the mere fact that [counsel] practices in Washington, D.C. is insufficient to accord him that market, let alone any rate within it.” *Holiday*, 591 F.3d at 229, 43 BRBS at 72(CRT). The court added that the *Laffey Matrix* is a useful starting point to determine fees, not a required referent,” and that “the BRB may consider, but is not bound by, the *Laffey Matrix*.” *Id.* The Fourth Circuit remanded the case to the Board to determine, *inter alia*, the appropriate geographic location and the appropriate market rate in that location. *Id.*

On remand from the Fourth Circuit, the Board held that where the Washington, D.C.–based attorney participated in the case only before the Board and had no contacts with the local area where the claimant resides and the hearing was held, Washington, D.C. is the appropriate geographic market for setting counsel’s hourly rate, as it is the community in which the Board sits. *Holiday v. Newport News Shipbuilding & Dry Dock Co.*, __ BRBS __, BRB No. 06-0345 (Aug. 11, 2010), slip op. at 2. The Board further held that the *Laffey Matrix* provided appropriate support, in addition to other evidence, for counsel’s requested hourly rate. *Id.*, slip op. at 3-4.

323 (4th Cir. 2008)(stating that the plaintiff “provided no evidence that the *Laffey* Matrix, which pertains to hourly rates of litigation attorneys in Washington, D.C., is a reliable indicator of the hourly rates of litigation attorneys in Reston, Virginia, a suburb of Washington, D.C.”). If claimant’s counsel seeks to rely on the *Laffey* Matrix in support of the requested hourly rates, she must demonstrate that it represents a reliable measure of the prevailing market rates for a Connecticut-based attorney’s services. *See generally Jeffboat, LLC v. Director, OWCP*, 553 F.3d 487, 42 BRBS 65(CRT) (7th Cir. 2009).

Moreover, claimant’s counsel has not provided an explanation of the methodology used in the version of the *Laffey* Matrix she submitted to the Board to derive market rates for attorneys located in Hartford, Connecticut. *See* n.8, *supra*. The Board is unable to evaluate the reliability of the rates listed for attorneys in counsel’s version of the Matrix without such an explanation. We note in this regard that the hourly rates listed for District of Columbia attorneys in claimant’s counsel’s version of the *Laffey* Matrix are appropriately based on the rates contained in the updated version of the Matrix prepared by the United States Attorney’s Office for the District of Columbia.¹⁰ At this juncture, we do not decide the question of whether the *Laffey* Matrix may be appropriately considered in determining the prevailing market rates for a Connecticut-based attorney. For the sake of clarification, however, we note that our cases approving consideration of the *Laffey* Matrix with respect to the rates of Washington, D.C.-based attorneys have been based on the updated version of the Matrix prepared by the United States Attorney’s Office. *See Holiday*, slip op. at 3-4; *Beckwith*, 43 BRBS at 159 and n.3. The Board does not consider the “Adjusted *Laffey* Matrix,” which uses a different method for updating the hourly rates for District of Columbia attorneys than that used by the United States Attorney’s Office,¹¹ to be a reliable indicator of the prevailing rates for District of Columbia attorneys. *See, e.g., Blackman v. District of Columbia*, 677 F.Supp. 2d 169, 175-176 (D.D.C. 2010); *Miller v. Holzmann*, 575 F.Supp. 2d 2, 17-18 (D.D.C. 2008). Similarly, any version of the *Laffey* Matrix which relies on the methodology used to update rates in the Adjusted *Laffey* Matrix in its calculation of market rates for attorneys in locations other than Washington, D.C. will not be accepted as reliable evidence by the Board.

¹⁰http://www.justice.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_8.html

¹¹ The “Adjusted *Laffey* Matrix,” is available online at <http://www.laffeymatrix.com/see.html>. *See, e.g., Rodriguez v. Secretary of Health and Human Services*, 91 Fed. Cl. 453, 465 n.10 (2010) for explanation of the differences in the two methods of updating the *Laffey* Matrix.

Claimant's counsel therefore has not supported her fee petition with adequate information for the purpose of determining the prevailing market rate. *See Maggard*, slip op. at 4; *see also Christensen*, 557 F.3d at 1055, 43 BRBS at 9(CRT)(Board should give fee applicant opportunity to cure defect if it could not be reasonably anticipated). To satisfy counsel's burden of producing satisfactory evidence that the requested rates are in line with those prevailing in the community for similar services by lawyers of comparable skill, experience, and reputation, she could submit, for example, affidavits of other lawyers in the relevant community who are familiar with counsel's skill and experience and could attest to the prevailing rates charged in the community by comparable attorneys for similar services. *See Cox*, 602 F.3d at 290; *B&G Mining, Inc.*, 522 F.3d at 666; *Maggard*, slip op. at 5 n.9; *see generally Serricchio v. Wachovia Securities, LLC*, 706 F. Supp. 2d 237, 254-255 (D.Conn. 2010); *M.K. v. Sergi*, 578 F.Supp. 2d 425, 427 (D.Conn. 2008); *Tsombanidis v. City of West Haven, Connecticut*, 208 F.Supp. 2d 263, 273 (D.Conn. 2002). Evidence regarding the fees that counsel has received for work involving cases of similar complexity could also be useful in establishing a reasonable prevailing market rate. *See Cox*, 602 F.3d at 290; *Maggard*, slip op. at 5 n.9.

Because claimant's counsel has not provided a complete fee application, we grant her thirty (30) days in which to submit an amended fee petition. *See Christensen*, 557 F.3d at 1055, 43 BRBS at 9(CRT); *Maggard*, slip op. at 6. The amended fee petition must include, *inter alia*, the professional status of each person for whose work a fee is claimed,¹² 20 C.F.R. §802.203(d)(2), and the normal billing rate of each person who performed services on behalf of the claimant. 20 C.F.R. §802.203(d)(4). Claimant's

¹² Claimant's counsel must identify the professional status, including the training, education, and experience, of her paralegal as required by 20 C.F.R. §802.203(d)(2).

counsel also should submit satisfactory evidence of prevailing market rates. Employer may file a response to claimant's counsel's amended fee petition within ten (10) days from receipt of the petition. 20 C.F.R. §802.203(g).

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge