

BRB Nos. 14-0031
and 14-0070

FERDINAND J. FABRE, JR.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
RAMSEY SCARLETT & COMPANY)	
)	DATE ISSUED: <u>Dec. 16, 2014</u>
and)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
)	
Employer/Carrier- Petitioners)	ORDER on MOTIONS for RECONSIDERATION and for an ATTORNEY'S FEE

HALL, Acting Chief Administrative Appeals Judge:

Employer timely moves for reconsideration of that part of the Board's September 25, 2014 decision,¹ wherein the Board affirmed the administrative law judge's finding that claimant is entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that his asbestosis is related to his work at employer's facility. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Claimant responds, urging denial of employer's motion for reconsideration. Claimant's counsel also seeks an attorney's fee for work performed before the Board in defense of employer's appeals.

In its motion for reconsideration, employer contends that the Board erred in holding that there was substantial evidence presented by claimant to rationally support the administrative law judge's finding that claimant was exposed to asbestos in the course of his work for employer at its Port facility. Employer seeks to "resubmit and reassert" facts and evidence "as set forth in their original Memorandum in Support of Petition for Review, which were noted by the dissenting opinion and which clearly demonstrate that

¹We note that the present composition of the Board renders employer's request for en banc reconsideration moot. 20 C.F.R. §801.301.

the claimant failed to satisfy his burden and establish a prima facie case.” Brief in Support of Motion for Reconsideration at 2. Employer has not demonstrated error in the Board’s decision to affirm the administrative law judge’s finding that claimant established his prima facie case that his asbestosis is related to his work for employer. We, therefore, deny its motion for reconsideration. 20 C.F.R. §802.409.

Counsel has filed an application for an attorney’s fee, seeking \$5,790 for services rendered before the Board in defense of claimant’s award in these appeals, representing 19 hours of attorney time at \$300 per hour and 1 hour of paralegal work at \$90 per hour. Employer has not responded to the attorney’s fee petition. Claimant is entitled to an attorney’s fee payable by employer for successfully defending employer’s appeals. *See Canty v. S.E.L. Maduro*, 26 BRBS 147 (1992); 20 C.F.R. §802.203(a). The hourly rates of \$300 for attorney time and \$90 for paralegal time requested by counsel are reasonable, 20 C.F.R. §802.203(d)(4), and the number of hours requested are reasonably commensurate with necessary work performed. 20 C.F.R. §802.203(e). We thus grant claimant’s counsel a fee of \$5,790, payable directly to counsel by employer. 33 U.S.C. §928; 20 C.F.R. §802.203.

Accordingly, employer’s motion for reconsideration is denied. Claimant’s counsel is awarded a fee of \$5,790 for work performed before the Board in BRB Nos. 14-0031, 14-0070, to be paid directly to claimant’s counsel by employer.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

I concur:

REGINA C. McGRANERY
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, dissenting:

For the reasons stated in my dissenting opinion in this case, I continue to respectfully dissent from my colleagues' decision to affirm the administrative law judge's finding that claimant established he was exposed to asbestos at employer's Port facility. Thus, I must also dissent from their decision to grant claimant's counsel an attorney's fee at this time. My position, that the administrative law judge's award of benefits should be vacated and the case remanded for further consideration, negates the underlying basis for such an award, i.e., there has not yet been a successful defense of employer's appeals.

JUDITH S. BOGGS
Administrative Appeals Judge