HAROLD S. ODDEN	)	BRB Nos. 04-0722 and
	)	04-0722A
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
LOUIS DREYFUS CORPORATION	)	DATE ISSUED: 01/30/2006
	)	
and	)	
	)	
CRAWFORD & COMPANY	)	
	)	
Employer/Carrier-Petitioners Cross-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest-Respondent	)	
	)	
	)	
HAROLD S. ODDEN	)	BRB No. 04-0904
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LOUIS DREYFUS CORPORATION	)	
	)	
and	)	
	)	
CRAWFORD & COMPANY	)	
	)	
Employer/Carrier-Respondents	)	ORDER on MOTION FOR RECONSIDERATION

Claimant has timely moved for reconsideration of the Board's Decision and Order in this case, *Odden v. Louis Dreyfus Corp.*, BRB Nos. 04-0722/A, 04-0904 (June 13, 2005). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). Claimant additionally has filed a motion to publish the Board's decision and a petition requesting an attorney's fee of $5,252.50 for work performed before the Board. Employer has not responded to any of claimant's motions.

In his motion for reconsideration, claimant first contends that the Board erred in vacating the administrative law judge's award of nominal benefits, averring that the administrative law judge found that his physical restrictions were due to his unscheduled neck injury and not his scheduled arm injury. In addition, claimant contends that the Board erred by instructing the administrative law judge to consider the necessity of a nominal award in this case given that claimant was able to pursue simultaneously an award for a loss in wage-earning capacity after his layoff.

We reject claimant's contentions as he has not identified any error in the Board's decision. The administrative law judge did not discuss any specific physical restrictions that could support a nominal award. As the Board stated in its decision, if the restrictions were due to claimant's elbow injury, a nominal award is precluded because claimant's arm condition is permanent, and the schedule is the exclusive remedy for permanent partial disability. *See* 33 U.S.C. §908(c), (h); *Metropolitan Stevedore Co. v. Rambo [Rambo II]*, 521 U.S. 121, 31 BRBS 54(CRT) (1997); *Potomac Electric Power Co. v. Director, OWCP*, 449 U.S. 268, 14 BRBS 363 (1980); *Porter v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 113 (2002). If the restrictions were due to claimant's neck injury, however, then the administrative law judge may find a nominal award is appropriate. *See Keenan v. Director, OWCP*, 392 F.3d 1041, 38 BRBS 90(CRT) (9th Cir. 2004). Furthermore, the Board did not preclude the administrative law judge from awarding nominal benefits merely because such an award may not have been necessary to preserve claimant's rights to seek future benefits, but instructed her to address the appropriateness of such an award given the circumstances of this case. *See Odden,* slip op. at 5.[1]

Claimant also contends that the Board erred in affirming the administrative law judge's reduction of his requested hourly rate from $250 to $225 due to the lack of complex issues, citing *Blum v. Stenson*, 465 U.S. 886 (1984). The attorneys' fee request in *Blum* was based on hourly rates of $95 to $105 per hour, but the attorneys also

[1] Contrary to claimant's contention, the Board did not discuss the Ninth Circuit's unpublished decision in *Price*, but merely included the subsequent history in its citation of the Board's decision. *See Price v. Stevedoring Services of America*, 36 BRBS 56 (2002), *aff'd in pert. part mem.*, Nos. 02-71207, 02-71578, 2004 WL 1064126 (9th Cir. May 11, 2004), *cert. denied*, 125 S.Ct. 1724 (2004).

requested a 50 percent increase in the overall fee due to "the complexity of the case, the novelty of the issues, and the 'great benefit' achieved." *Id.* at 891. The Supreme Court stated that its decision in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), permits a fee greater than the hourly rate times the number of hours expended if an enhanced fee is warranted due to "'exceptional success,'" *Blum*, 465 U.S. at 897, *quoting Hensley*, 461 U.S at 435, but that such an enhanced fee was not warranted in *Blum* because the allegation of novelty and complexity was conclusory. The Court stated,

> There may be cases, of course, where the experience and special skill of the attorney will require the expenditure of fewer hours than counsel normally would be expected to spend on a particularly novel or complex issue. In those cases, the special skill and experience of counsel should be reflected in the reasonableness of the hourly rates. Neither complexity nor novelty of the issues, therefore, is an appropriate factor in determining whether to *increase* the basic fee award.

465 U.S at 898-899 (emphasis added).

There is no merit to claimant's contention that *Blum* stands for the proposition that a requested hourly rate cannot be reduced due to the lack of complexity of a case merely because complexity cannot support an increased fee, as the converse of a proposition is not always true. *See, e.g., Johnson v. U.S.*, 228 U.S. 457 (1913). Moreover, claimant overlooks the regulation governing attorney's fee awards before the administrative law judge. Section 702.132 states:

> 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*, and the amount of benefits awarded, ...

20 C.F.R. §702.132(a) (emphasis added). This regulation specifically states that the complexity of issues is a relevant factor in setting a fee award and it does not constrain the administrative law judge from reducing the hourly rate to account for this factor. Thus, we reject claimant's contention that the Board erred in affirming the administrative law judge's reduction of the hourly rate.

Upon consideration of claimant's motion to publish the Board's June 13, 2005, Decision and Order, the Board is of the opinion that publication is not warranted. Claimant's motion, therefore, is denied.

Claimant has filed a petition for an attorney's fee for work performed before the Board in BRB Nos. 04-0722 and 04-0904, in which claimant was primarily successful.[2]

[2] Although the Board remanded the case for reconsideration of the nominal award, it affirmed the ongoing permanent partial disability award, 33 U.S.C. §908(c)(21), and it modified the district director's fee award to reflect an hourly rate of $225 rather than $210.

He seeks a fee of $5,252.50, representing 18.50 hours at $275 per hour for attorney services and 1.50 hours at $110 per hour for legal assistant services. Employer has not filed objections to the fee request. Because we have denied claimant's motion for reconsideration, we disallow the 4.75 hours of attorney services spent in this endeavor. *Hensley*, 461 U.S. 424. We find the remaining hours of services reasonably commensurate with the necessary work performed and with the complexity of the case, the quality of the representation, and the amount of benefits awarded. *See* 20 C.F.R. §802.203(e). We award a fee for 13.75 hours of attorney services at the hourly rate of $250 per hour, and 1.50 hours of legal assistant services at $100 per hour, as these rates are reasonable for the geographic area where the claim arose. 20 C.F.R. §802.203(d)(4). We, therefore, award claimant's counsel an attorney's fee of $3,587.50, for work performed before the Board, to be paid directly to claimant's counsel by employer. 33 U.S.C. §928.

Accordingly, we deny claimant's motion for reconsideration and motion to publish. 20 C.F.R. §802.409. Claimant's attorney is awarded a fee of $3,587.50 for work performed before the Board in BRB Nos. 04-0722 and 04-0904.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge