ANNE M. SMITH	)	BRB No. 13-0331
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HUNTINGTON INGALLS INDUSTRIES, INCORPORATED-NEWPORT NEWS SHIPBUILDING	)	DATE ISSUED: Mar. 19, 2014
	)	
Self-Insured Employer-Petitioner	)	
	)	
ANNE M. SMITH	)	BRB No. 13-0500
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HUNTINGTON INGALLS INDUSTRIES, INCORPORATED-NEWPORT NEWS SHIPBUILDING	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeals of the Decision and Order and the Supplemental Decision and Order Awarding Attorney Fees of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

John H. Klein (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

Before: SMITH, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order and claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (2010-LHC-01843) of Administrative Law Judge Daniel A. Sarno, Jr., rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (the Act).[1] We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See, e.g., Kerns v. Consolidation Coal Co.*, 176 F.3d 802 (4th Cir. 1999).

Claimant was employed as a Clerk II in the mail services department of employer's Newport News Shipbuilding facility when, on March 1, 1990, she injured her back while processing 60-pound boxes of microfiche. Employer paid claimant disability and medical benefits for this injury under the Virginia workers' compensation statute. Claimant underwent two back surgeries prior to being laid off by employer in 1992 as part of a reduction-in-force. Following her lay-off, claimant obtained other employment, and she most recently worked at Bass Pro Shops. Claimant's work-related back condition worsened in 2008, and she underwent a spinal fusion on June 29, 2009 and a surgical revision of the fusion on October 14, 2010. Claimant's employment with Bass Pro Shops was terminated when she underwent back surgery in June 2009, and she has not worked since that time.

In his Decision and Order, the administrative law judge accepted the parties' stipulations, *inter alia*, that the Section 3(a), 33 U.S.C. §903(a), situs requirement of the Act is satisfied and that claimant sustained a work-related back injury on March 1, 1990. The administrative law judge found that claimant's employment duties with employer were integral to the shipbuilding process and were not exclusively clerical in nature and, thus, that the Section 2(3), 33 U.S.C. §902(3), status requirement of the Act is met. The administrative law judge further found that claimant reached maximum medical improvement on August 3, 2011, that she has been unable to perform her usual employment duties since June 29, 2009, and that employer established the availability of suitable alternate employment as of September 1, 2011. Therefore, the administrative law judge awarded claimant temporary total disability benefits from June 29, 2009 through August 2, 2011, permanent total disability benefits from August 3, 2011 through

[1] We consolidate for purposes of decision employer's appeal of the administrative law judge's Decision and Order, BRB No. 13-0331, and claimant's appeal of the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees, BRB No. 13-0500. 20 C.F.R. §802.104(a).

August 31, 2011, and ongoing permanent partial disability benefits thereafter. 33 U.S.C. §908(a), (b), (c)(21), (h).

Claimant's attorney subsequently filed a petition with the administrative law judge requesting a fee of $15,340.50, representing approximately 55.25 hours of services rendered at hourly rates varying from $95 to $350, plus costs of $286.62. Employer filed objections to the fee petition. In his supplemental decision, the administrative law judge reduced the $350 hourly rate sought for attorney services to $300 and reduced the $200 hourly rate sought for law clerk services to $150. He further addressed employer's objections to specific entries, and disallowed or reduced certain entries as duplicative, excessive or unnecessary. The administrative law judge accordingly awarded claimant's counsel a total fee of $11,096.17, representing 26.52 hours of attorney services at $300 per hour, 10.1 hours of law clerk services at $150 per hour, 14.09 hours of paralegal services at $95 per hour, and $286.62 in costs.

On appeal, employer challenges the administrative law judge's finding that claimant meets the status requirement for coverage under the Act. Employer avers, in the alternative, that the administrative law judge erred in awarding total, rather than partial, disability benefits for the periods from October 26, 2009 through October 13, 2010, and from February 15 through August 31, 2011. Claimant responds, urging affirmance. BRB No. 13-0331. Claimant appeals the administrative law judge's fee award, challenging the administrative law judge's hourly rate determinations for the attorney and law clerk services performed in this case. Employer responds, urging affirmance of the fee award. BRB No. 13-0500.

We first address employer's contention that the administrative law judge erred in finding that claimant met the status requirement for coverage under the Act. Employer avers that the administrative law judge erroneously found that claimant's work as a clerk in employer's mail services department involved activities which were integral to the shipbuilding process and were neither exclusively clerical nor office-oriented. *See* Decision and Order at 9-13. Under Section 2(3) of the Act, a covered employee is "any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker . . . ." 33 U.S.C. §902(3). Generally, a claimant satisfies the status requirement as a maritime employee if she is an employee engaged in work which is integral to the loading, unloading, constructing, or repairing of vessels. *Chesapeake & Ohio Ry. Co. v. Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT) (1989). To satisfy this requirement, claimant need only "spend at least some of [her] time" in indisputably maritime activities. *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 273, 6 BRBS 150, 165 (1977); *see CSX Transp., Inc. v. Shives*, 151 F.3d 164, 32 BRBS 125(CRT) (4th Cir.), *cert. denied*, 525 U.S. 1019 (1998). Although an employee is

covered if some portion of her activities constitute covered employment, those activities must be more than episodic, momentary or incidental to non-maritime work. *Stalinski v. Electric Boat Corp.*, 38 BRBS 85, (2005); *Zeringue v. McDermott, Inc.*, 32 BRBS 275 (1998); *Coleman v. Atlantic Container Service, Inc.*, 22 BRBS 309 (1989), *aff'd*, 904 F.2d 611, 23 BRBS 101(CRT) (11th Cir. 1990). A key factor in determining status is the nature of the activity to which an employee may be assigned. *P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 11 BRBS 320 (1979); *Shives*, 151 F.3d at 169, 32 BRBS at 129(CRT).

In this case, the administrative law judge determined first that claimant's work constitutes maritime employment as she was engaged in activities that were integral to the shipbuilding process. *See* Decision and Order at 9-11. The administrative law judge found support for this finding in *Boone v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 1 (2003), in which the Board reaffirmed its holding in a previous decision in that case that claimant Boone's work as a material supplies clerk was integral and essential to the shipbuilding process and that she was therefore a "maritime employee." Claimant Boone's duties included removing invoices attached to individual cartons of material arriving at her employer's warehouse and placing numerical codes on each invoice to denote its destination within the employer's shipyard; she was not required to open the cartons of materials or to move them. *Id.* The Board reaffirmed its prior holding that the "claimant's duties of receiving the shipbuilding materials and forwarding them to the correct destination in the shipyard is integral and essential to the shipbuilding process, as 'without an employee to receive materials and forward them to the correct destination within the shipyard, the shipbuilding process could not continue.'" *Id*. at 3 (quoting *Boone v. Newport News Shipbuilding & Dry Dock Co.*, BRB No. 00-0766 (Sept. 14, 2001) (Decision on Recon.)(unpub.)).

As found by the administrative law judge, the duties of claimant in this case are analogous to those of the claimant in *Boone*, and the evidence regarding claimant's work activities supports the administrative law judge's determination that claimant's work qualifies as maritime employment. In discussing the limited evidence regarding claimant's duties, the administrative law judge found that claimant's job involved processing ingoing, outgoing and interdepartmental mail. *See* Decision and Order at 3, 10; Tr. at 9; Ex. 4 at 7. Significantly, the administrative law judge credited claimant's uncontroverted hearing and deposition testimony that in addition to handling letters and paperwork, claimant regularly processed items used in employer's shipbuilding operations including "tools, metal pieces, plates, shafts, [and] big, old pipes." Decision and Order at 3-4 (quoting claimant's hearing testimony, Tr. at 10). The administrative law judge reasoned that, as in *Boone*, claimant's duties in this case were integral to the shipbuilding process because that process "could not continue if the requisite materials were not received and forwarded to their destinations in the shipyard." *Id*. at 10. The administrative law judge added that "it would be inconsistent to hold that duties which do

not include the handling of materials regularly used in shipbuilding are maritime work--as was determined in *Boone*--while the more physical work of actually maneuvering materials is not maritime work as Employer asserts in this case." *Id*.

In arguing that claimant's job does not constitute "maritime employment," employer focuses on those portions of claimant's duties that involve the processing and delivery of letters and other paperwork. In her uncontroverted hearing and deposition testimony, however, claimant testified that in addition to her responsibilities involving paper mail, she was regularly required to process tools and parts used in employer's shipbuilding operations and to deliver shipbuilding materials to the Supervisor of Shipbuilding.[2] *See* Decision and Order at 4; Tr. at 9-10, 20-21. Based on this uncontroverted testimony, the administrative law judge could reasonably infer that claimant's failure to perform her regular duties receiving, processing and forwarding incoming shipbuilding materials to their places of destination in the shipyard would be an impediment to employer's shipbuilding process. *See* Decision and Order at 10; *Schwalb*, 493 U.S. 40, 23 BRBS 96(CRT); *Boone*, 37 BRBS at 3; *Sumler v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 97 (2002). Therefore, as claimant spent at least some of her time performing duties which were integral to the shipbuilding process, we affirm the administrative law judge's determination that claimant's work constitutes "maritime employment".

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[2] Specifically, claimant testified at the hearing that she handled materials coming into the shipyard, including tools and shafts, which were used in employer's shipbuilding operations. Tr. at 9-10. She also delivered mail, including bolts and other parts, to the Supervisor of Shipbuilding. *Id.* at 20-21. Similarly, on deposition, claimant testified that she received packages sent from outside the shipyard containing parts to go on ships, including gaskets, nuts, bolts, pipes, and tools. Ex. 4 at 19. Claimant explained that she was required to open the packages in order to process the items; after determining where a particular item was going, claimant would process it and put it in the designated location where it would be picked up by employer's in-house mail carrier to be delivered to the proper destination in the shipyard. *Id*. at 20-21. Claimant testified that she dealt with shipbuilding materials being shipped into or out of the shipyard "almost daily." *Id*. at 22.

In addition to processing incoming mail, claimant testified that she was responsible for processing outgoing mail. This outgoing mail was not limited to paperwork, but also included tools, metal plates, pipes, gaskets, valves, and microfiche that were being sent out of the shipyard. *See* Tr. at 10-11, 19; Ex. 4 at 7-8, 10-11. These materials were sent out of the shipyard on a daily basis, *see* Ex. 4 at 24, and were sent to various places, including employer's satellite offices, to be stored or tested. Tr. at 10. For items designated as "confidential," such as microfiche, claimant was responsible for wrapping, stamping, lifting, and moving the items. *See* Tr. at 10-11; Ex. 4 at 7, 10-12.

The administrative law judge next considered whether claimant, although engaged in maritime employment, could nonetheless be excluded from coverage by the Section 2(3)(A), 33 U.S.C. §902(3)(A), clerical exception. *See* Decision and Order at 11-13. In 1984, Congress amended Section 2(3) to specifically exclude certain employees from coverage. The pertinent provision in this case, Section 2(3)(A), provides for the exclusion of "[i]ndividuals employed *exclusively to perform office clerical*, secretarial, security, or data processing work," if such persons are covered by state workers' compensation laws. 33 U.S.C. §902(3)(A) (emphasis added). As recognized by the administrative law judge in this case, work that is integral to the longshoring or shipbuilding process may nonetheless be excluded under Section 2(3)(A) if the work is exclusively clerical and office-oriented. *See* Decision and Order at 11; *Williams v. Newport News Shipbuilding & Dry Dock Co.*, 47 F.3d 1166, 29 BRBS 75(CRT) (4th Cir. 1995) (table), *vacating* 28 BRBS 42 (1994); *Stalinski*, 38 BRBS at 87-88; *Boone*, 37 BRBS 1; *Ladd v. Tampa Shipyards, Inc.*, 32 BRBS 228, 230 (1998); *Bergquist v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 131, 134 (1989). We affirm the administrative law judge's finding that claimant's duties were not exclusively clerical so as to exclude her from coverage pursuant to Section 2(3)(A).

The Board has held that claimants who exclusively perform tasks that are clerical in nature, and who continue to perform clerical work during their occasional forays outside of the office setting, are excluded from coverage by Section 2(3)(A). *Stalinski*, 38 BRBS at 89; *Ladd*, 32 BRBS at 231; s*ee also Bergquist*, 23 BRBS 131. In such cases, the Board has deemed it significant that the claimants' work involved processing paperwork or other forms of data and that the claimants did not regularly handle shipbuilding materials. *See Stalinski*, 38 BRBS at 88-89; *Ladd*, 32 BRBS at 230; *Bergquist*, 23 BRBS at 135. The Board has distinguished the situation of the claimants in such cases from that of an employee who primarily performs office clerical work but is regularly assigned to perform other tasks that are not clerical in nature. *Stalinski*, 38 BRBS at 89. In this case, the administrative law judge found claimant's work factually distinguishable from the work performed by the claimants in *Stalinski*, *Ladd*, and *Bergquist*. *See* Decision and Order at 11-12. The administrative law judge determined that, unlike the claimants in those cases, claimant's work was not exclusively limited to handling paperwork or other data; rather, claimant's regular duties included handling and processing shipbuilding materials. *Id.* at 12. The administrative law judge therefore concluded that as claimant regularly performed work that was not clerical in nature, the Section 2(3)(A) clerical exception does not apply. *Id*. at 12-13. As the administrative law judge's analysis of this issue is consistent with law, and as substantial evidence supports the administrative law judge's finding that the work performed by claimant was not exclusively office clerical work, his conclusion that the Section 2(3)(A) clerical exception to coverage is inapplicable is affirmed. *Boone*, 37 BRBS 1. Accordingly, we

affirm the administrative law judge's finding that claimant was engaged in covered employment with employer.

Employer next assigns error to the administrative law judge's finding that claimant was totally disabled due to her work-related back condition from June 29, 2009 through August 31, 2011. In addressing this issue, the administrative law judge found that employer established the availability of suitable alternate employment as of September 1, 2011, but he rejected employer's contention that suitable alternate employment was established for the periods from October 26, 2009 through October 13, 2010, and from February 14 through August 31, 2011.[3] *See* Decision and Order at 15, 18. In this regard, the administrative law judge found that the jobs listed in employer's labor market survey were reported to be available from September to December 2011, and that employer submitted no evidence that the identified jobs were available during the earlier time periods for which it argued suitable alternate employment was established. *See id.* at 15-16; Ex. 2. The administrative law judge determined that employer's labor market survey established that a number of suitable alternate jobs were available to claimant as of September 2011, Decision and Order at 16-17, and therefore concluded that employer established that claimant was partially, rather than totally, disabled from September 1, 2011 to the present and continuing. *Id.* at 18. The administrative law judge relied on the wages paid for the City of Portsmouth Clerk II position listed in employer's labor market survey to establish claimant's wage-earning capacity as of September 1, 2011. *See id.* at 8, 19; Ex. 2. Consequently, the administrative law judge awarded claimant temporary total disability benefits from June 29, 2009 through August 2, 2011, permanent total disability benefits from August 3 through August 31, 2011, and permanent partial disability benefits from September 1, 2011 to the present and continuing. *See* Decision and Order at 18-20. We reject employer's contention that the administrative law judge erred, and we affirm the administrative law judge's finding that claimant is entitled to total disability benefits for the period June 29, 2009 through August 31, 2011.

Once a claimant has established a prima facie case of total disability by showing that she cannot return to her usual work, as here, the burden shifts to the employer to establish the availability of suitable alternate employment. *Lentz v. The Cottman Co.*, 852 F.2d 129, 21 BRBS 109(CRT) (4th Cir. 1988); *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (4th Cir. 1988). Employer must demonstrate the realistic availability of a range of jobs which claimant is capable of

[3] Employer acknowledges that claimant is entitled to temporary total disability benefits from June 29 through October 25, 2009 and from October 14, 2010 through February 14, 2011, periods during which claimant was recovering from her June 29 and October 14, 2009 back surgeries and had not been released to return to restricted duty work. *See* Decision and Order at 13; Emp. Br. at 20.

performing given her age, physical restrictions, and educational and vocational background. *Lentz*, 852 F.2d 129, 21 BRBS 109(CRT); s*ee also Tann*, 841 F.2d 540, 21 BRBS 10(CRT). Employer may meet its burden by presenting evidence of jobs that were available during the time claimant was able to work. *Tann*, 841 F.2d 540, 21 BRBS 10(CRT). Moreover, employer may fulfill its burden by showing that claimant is actually working within her work restrictions in employer's own facility or in other suitable employment she obtained on her own. *See generally Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999); *Darden v. Newport News Shipbuilding & Dry Dock Co.*, 18 BRBS 224 (1986).

Employer contends it satisfied its burden of establishing the availability of suitable alternate employment for the periods from October 26, 2009 through October 13, 2010 and from February 15 through August 31, 2011 with its labor market survey and with evidence that claimant worked for Bass Pro Shops until she underwent back surgery in June 2009. We disagree. First, the administrative law judge properly found that employer's labor market survey does not indicate that the identified jobs were available prior to September 2011. *See* Decision and Order at 15-16. Indeed, the labor market survey dated December 12, 2011 explicitly states that its purpose was to determine suitable alternate employment and wage-earning capacity from September 6, 2011 through the present. *See* Ex. 2(a). While an employer may establish the availability of suitable alternate employment with a retrospective labor market survey, *Stevens v. Director, OWCP*, 909 F.2d 1256, 23 BRBS 89(CRT) (9th Cir. 1990), *cert. denied*, 498 U.S. 1073 (1991), employer in this case proffered no evidence to establish that the jobs listed in its labor market survey were available prior to September 2011.

Furthermore, there is no merit to employer's contention that claimant's work for Bass Pro Shops establishes her wage-earning capacity for the periods from October 26, 2009 through October 13, 2010 and from February 15 through August 31, 2011. Claimant testified, and employer does not dispute, that her job with Bass Pro Shops was terminated when she needed to undergo surgery for her work-related back injury in June 2009. *See* Tr. at 12-13; Ex. 4 at 18. Employer therefore cannot rely on claimant's employment with Bass Pro Shops to establish the availability of suitable alternate employment, and thereby her wage-earning capacity, for any period subsequent to June 2009. *See Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (alternate jobs must be open at "critical time" when claimant is able to work); *LaRosa v. King & Co.*, 40 BRBS 29 (2006). We therefore affirm the administrative law judge's finding that claimant is entitled to total disability benefits from June 29, 2009 until September 1, 2011, when employer first met its burden of establishing the availability of suitable alternate employment.

Lastly, we address claimant's appeal of the administrative law judge's fee award, in which claimant challenges the administrative law judge's reduction in the hourly rates for the attorney and law clerk services. BRB No. 13-0500. 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. *See Perdue v. Kenny A.*, 559 U.S. 542 (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.*, 559 U.S. 551. 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 reputation." *Blum*, 465 U.S. at 896 n.11; *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); *see also Christensen v. Stevedoring Services of America*, 557 F.3d 1049, 43 BRBS 6(CRT) (9th Cir. 2009); *B & G Mining, Inc. v. Director, OWCP*, 522 F.3d 657 (6th Cir. 2008); *Stanhope v. Electric Boat Corp.*, 44 BRBS 107 (2010) (Order). This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, which stated in *Cox* that "[i]n addition to the attorney's own affidavits, the fee applicant must 'produce satisfactory specific evidence of the prevailing market rates in the relevant community for the type of work for which he seeks an award."' *Cox*, 602 F.3d at 289 (quoting *Plyler v. Evatt*, F.2d 273, 277 (4th Cir. 1990)). The Fourth Circuit provided examples of the kinds of evidence that the fee applicant could submit to satisfy this burden, including: affidavits of other local attorneys who are familiar with the applicant's skill and the type of work in the relevant community; evidence of fees the fee applicant has received in the past; and evidence of rates awarded in other administrative proceedings of similar complexity. *Cox*, 602 F.3d at 290.

In this case, claimant's counsel submitted no evidence to the administrative law judge in support of his requested hourly rates other than the information contained in the fee petition itself. Rather, in his fee petition, counsel cited fee awards he received in other longshore cases which approved an hourly rate of $300 for attorney work and $150 for law clerk work. Claimant asserted that increases in the national average weekly wage and the growth of the port in Hampton Roads justify an increase in those rates to $350 per hour for attorney work and $200 per hour for law clerk work. *See* Fee Pet. at 1-4. The administrative law judge considered the fee awards cited in claimant's counsel's fee petition approving a $300 hourly rate, the high quality of counsel's representation, and the judge's own knowledge of the market rates for highly competent longshore attorneys in the relevant community, and determined, based on these considerations, that $300 is a

reasonable hourly rate for the attorney services performed in this case. *See* Supp. Decision and Order at 3. The administrative law judge found in this regard that counsel did not submit satisfactory evidence to establish that the prevailing hourly rate for the attorney work exceeds $300. *Id*. With respect to the rate for the law clerk services performed by "KAM," the administrative law judge found, based on prior awards for KAM's services and on rates for other law clerks in the relevant community, that an hourly rate of $150 is reasonable. *Id.*

Claimant has not shown an abuse of discretion in the administrative law judge's determination that $300 represents a reasonable hourly rate for the attorney services and that $150 represents a reasonable hourly rate for the law clerk services performed in this case. The administrative law judge properly relied on counsel's own citation to fee awards in other longshore cases as support for his hourly rate determinations. Moreover, the administrative law judge reasonably found that counsel did not produce satisfactory evidence to support his assertion that the hourly rates approved in those cases should be increased to the rates requested by counsel in this case.[4] Thus, as claimant's counsel did not provide satisfactory specific evidence to support the requested hourly rates, the administrative law judge acted within his discretion in determining reasonable hourly rates for the attorney and law clerk services performed in this case. *See generally Eastern Assoc. Coal Corp. v. Director, OWCP*, 724 F.3d 561 (4th Cir. 2013). We therefore affirm the administrative law judge's awarded hourly rates of $300 for attorney services and $150 for law clerk services.

[4] In his Petition for Review and brief filed with the Board, claimant's counsel provides additional citations to fee awards his firm has received in other longshore cases; he also has attached to his Petition for Review various documents, including fee awards and the resume of law clerk "KAM." As claimant's counsel did not submit these citations and documents to the administrative law judge, he cannot now rely on them to attempt to demonstrate that the administrative law judge abused his discretion in making his hourly rate determinations. *See generally Cox*, 602 F.3d at 289-90; *Holiday*, 591 F.3d at 230 n.12, 43 BRBS at 72 n.12(CRT).

Accordingly, the administrative law judge's Decision and Order is affirmed. BRB No. 13-0331. The administrative law judge's Supplemental Decision and Order Awarding Attorney Fees also is affirmed. BRB No. 13-0500.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge