U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 17-0667

SHIRLEY MacDONALD	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED: Sept. 10, 2018
ARMY & AIR FORCE EXCHANGE SERVICE, HAHN AIR FORCE BASE	)	
	)	
and	)	
	)	
AIR FORCE INSURANCE FUND	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Compensation Order Awarding Attorney Fees of Marco A. Adame II, District Director, United States Department of Labor.

Richard Mark Baker, Long Beach, California, for claimant.

Gregory D. Cox (AFSVA/JA), Lackland AFB, Texas, for employer/carrier.

Ann Marie Scarpino (Kate S. O'Scannlain, Solicitor of Labor; Kevin Lyskowski, Acting Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

HALL, Chief Administrative Appeals Judge:

Employer appeals the Compensation Order Awarding Attorney Fees (Case No. 02-098354) of District Director Marco A. Adame II 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). The district director's fee award must be affirmed unless it is shown to be arbitrary, capricious, based on an abuse of discretion, or not in accordance with the law. *See Ferguson v. Newport News Shipbuilding & Dry Dock Co.*, 36 BRBS 17 (2002).

The relevant facts in this case are undisputed. The case arises out of a right knee injury claimant suffered at Hahn Air Force Base in Germany on June 21, 1988. Employer paid claimant medical benefits and temporary total disability compensation.

On May 24, 1994, Administrative Law Judge Robert Hillyard issued a Decision and Order Approving Section 8(i) Settlement of the compensation claim. Medical benefits were not settled and claimant remained entitled to medical treatment under Section 7 of the Act, 33 U.S.C. §907, for conditions arising out of her work-related injury. Claimant retained attorney Richard Mark Baker (counsel) in 1998 to represent her interests in a number of disputes regarding employer's liability for medical benefits.

On June 28, 2004, claimant's counsel submitted a petition to employer, seeking a fee of $16,775.00, for work performed between May 1998 and June 2004. Employer did not respond to this petition.

At a May 30, 2005, informal conference with an Office of Workers' Compensation (OWCP) claims examiner, claimant's counsel raised the issue of his unpaid attorney's fee. The claims examiner recommended that he submit an updated fee request and that the parties attempt to resolve the issue.

Due to further unresolved disputes concerning medical treatment, the case was referred to the Office of Administrative Law Judges (OALJ). The parties eventually entered into stipulations that were approved on June 23, 2006 by Administrative Law Judge William Dorsey. This Order provided that employer would be responsible for specific medical treatment and for an attorney's fee under Section 28 of the Act. If the parties could not resolve the amount of an attorney's fee for claimant's counsel, "a fee application for

those fees and costs shall be submitted." EX 2. The Order did not provide a time frame for submission of the fee petition.

In January 2010, claimant's counsel tried to contact employer's counsel regarding his attorney's fee. *See* EX 6. Employer's counsel eventually spoke to counsel's office manager and stated that he would look into the matter and get back to her. *Id.* However, employer did not do so.

In January 2016, claimant's counsel sent the OWCP a letter regarding his attorney's fee, stating that several attempts had been made to resolve this issue without success.[1] He attached a copy of the July 1, 2014 letter he had sent to the carrier enclosing his fee petition and asking the carrier to review it and contact his office.

On February 16, 2016, employer's counsel wrote to claimant's counsel stating that due to the passage of ten years since the stipulations were approved, all the individuals involved in the case had retired and all files had been placed into storage. He also asked claimant's counsel to provide justification for the claimed hourly rate of $250 and for the delay in submitting the fee petition. Over the next several months, employer's counsel asserted that he attempted without success to retrieve the case files and argued that employer was prejudiced by counsel's neglect and delay in pursuing his fee. By letter dated September 13, 2016, claimant's counsel responded, noting his previous efforts to resolve this issue and he submitted an updated attorney's fee petition covering work performed from July 1, 2004 to June 22, 2006, seeking an additional fee of $5,185.00 for 20.2 hours of work at an hourly rate of $250 plus costs of $135.

On September 15, 2016, an informal conference was held to discuss counsel's fee petition. Afterward, the OWCP claims examiner recommended that the district director award an attorney's fee for work performed before the OWCP and asked claimant's counsel to submit a revised fee petition which separated services performed at the OWCP level from those performed at the OALJ level. Employer objected to the recommendations, arguing that because claimant's counsel had not filed his fee petition for ten years after Judge Dorsey's Order was entered, he had waived any claim to an attorney's fee.

The district director found that claimant's counsel is entitled to an attorney's fee payable by employer for obtaining medical benefits for claimant. Compensation Order at 7. He noted that employer objected to the $250 hourly rate but provided no evidence that the rate is not appropriate and proposed no other hourly rate; he concluded that $250 is a

[1] Claimant died on March 7, 2014.

reasonable hourly rate. *Id.* at 8. He also noted that employer did not object to any specific itemized entries.

The district director rejected employer's contention that it was prejudiced by the late filing of the fee petition, noting that the bulk of the attorney's fee was itemized in the 2004 fee petition. He concluded that the delay in pursuing the attorney's fee petition was due to excusable neglect. Compensation Order at 10. He further disallowed certain individual entries for services rendered before the OALJ. He awarded counsel an attorney's fee for 46.1 hours at an hourly rate of $250, for a total of $11,525.00. *Id.*

Employer appeals the district director's Compensation Order, challenging the award of fees. Claimant's counsel and the Director, OWCP, each filed a response brief, urging affirmance of the Compensation Order.

Employer argues that the district director's award is arbitrary and capricious and, therefore, should be reversed. Employer specifically states that the ten-year delay in filing the fee petition is prejudicial on its face to employer and further cites as support an Order Denying Fee Request issued on March 15, 2017, by Administrative Law Judge Richard M. Clark in this case for work performed before the OALJ.[2] Judge Clark concluded that claimant's counsel had not met the standard for excusable neglect and therefore denied the fee petition.[3] *See* EX 7.

Neither the Act nor the regulations governing fee petitions before the OALJ and the OWCP specifies a time period for filing a fee petition. 33 U.S.C. §928; 20 C.F.R. §702.132; *see Harmon v. Sea-Land Serv., Inc.*, 31 BRBS 45 (1997). Section 702.132(a) states instead that a fee application "shall be filed . . . within the time limits specified by . . . [the] district director [or] administrative law judge. . . ."

[2] The case was assigned to Judge Clark due to Judge Dorsey's retirement.

[3] The United States Supreme Court set forth a standard for "excusable neglect" when a court may permit a late filing after a deadline has passed. *See Pioneer Inv. Services Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380 (1993). The factors to be considered in determining if excusable neglect has been shown are: 1) prejudice to the opposing party; 2) the length of the delay and its potential impact on judicial proceedings; 3) the reason for the delay, including whether it was within the reasonable control of the movant; and 4) whether the movant acted in good faith. *Id.* at 395.

In this case, there was no imposed deadline. The issue, therefore, is solely one of abuse of discretion.[4] The district director did not abuse his discretion, as his findings indicate he weighed competing equities. The district director determined that there was no prejudice to employer in spite of the delay. Compensation Order at 9. He emphasized that employer was aware of the fee petition as of 2004, that the issue of the outstanding attorney's fee had been raised again in 2005 and 2006, and that employer stipulated to its liability for a fee but that employer chose to take no action in this respect. *Id.* at 7. He acknowledged that there was an "undesirably long time for claimant's counsel to follow up on his unresolved fee request," but noted that Judge Dorsey did not set a due date for claimant's counsel to file a fee request and that any delay in resolving the fee request was as much employer's fault as it was claimant's counsel's. *Id.* at 7, 9. He credited claimant's counsel's attempt to contact employer about the attorney's fee in 2010 with no response from employer in concluding that employer was also at fault in the delay. *Id.* at 9. He further concluded that claimant's counsel acted in good faith. *Id.* at 10.

We further reject employer's contention that the district director erred in not following the reasoning of Judge Clark in his Order denying attorney's fees for work performed before the OALJ. The Act and the regulations are explicit in stating that the decision-maker at each level is responsible for determining whether an attorney's fee should be awarded for work performed at that level. *See* 33 U.S.C. §928(c); 20 C.F.R. §702.132(a); *see, e.g., Ford Aerospace & Communications Corp. v. Boling*, 684 F.2d 640 (9th Cir. 1982). Thus, the district director was not bound by Judge Clark's determinations. That the district director made his own findings, which differ from those of Judge Clark, does not render his findings arbitrary or capricious. We further note that employer's citation of an article regarding the timely filing of fee petitions written by Judge Dorsey is unavailing, as the article is not binding authority.

Employer has not established that the district director abused his discretion in this matter. *See generally Bankes v. Director, OWCP*, 765 F.2d 81 (6th Cir. 1985), *aff'g* 7 BLR 1-102 (1984) (no abuse of the district director's discretion in rejecting a late-filed fee petition). The district director explained the reasoning for his conclusions and considered relevant factors. Employer admits, and the record supports, that employer was aware of its liability for attorney's fees in this case as of June 2004, prior to the June 23, 2006 Order in which Judge Dorsey accepted the parties' stipulation that employer would pay the attorney's fee. Employer argues that it has been prejudiced because the over ten-year delay means that the individuals involved in the case have retired and the case files moved into storage, thus not permitting it to properly respond to the fee petition. The district director,

[4] We note that the excusable neglect standard set forth by the Supreme Court applies only where a party has missed a deadline. *See Pioneer Inv. Services Co.*, 507 U.S. at 387.

however, found that employer's argument lacked merit because employer already had the original fee petition on file by July 2004 and could therefore have responded at an earlier time. Compensation Order at 7.

In addition, the district director's rationally concluded that claimant's counsel was not solely at fault for the delay. The district director accepted as credible claimant's counsel's account of attempting to reach employer's counsel in 2010 to discuss the fee petition and employer's counsel's lack of response. The district director took note of the fact that employer failed to respond not only to the initial fee petition filed in 2004 but also took no action to try to resolve the matter in any of the years following the initial petition or the 2006 Order accepting the parties' stipulation that employer would be responsible for paying the attorney's fee, or in 2010, after being contacted by claimant's counsel. *See* Compensation Order at 7. As the district director reasonably found that employer failed to show that it was prejudiced, we affirm the district director's award of an attorney's fee to claimant's counsel, payable by employer.[5] As no other contention is raised concerning the amount of the attorney's fee awarded, it is affirmed.

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[5] Notably, we stress that our review of a district director's decision on the timeliness of a petition for attorney's fees under the Longshore Act is extremely limited. While the Act mandates that a claimant's attorney is entitled to a fee upon the successful prosecution of a claim, neither the Act nor the regulations establish a deadline for the fee petition. Instead, district directors possess the discretion to set time limits, or not, for the submission of a fee request as he sees fit. *Cf. Bankes v. Director, OWCP*, 765 F.2d 81, 82 (6th Cir. 1985). We may only set aside a decision to award a fee it is shown to be "arbitrary, capricious, based on an abuse of discretion, or not in accordance with the law." *Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 41 BRBS 53(CRT) (9th Cir. 2007).

Deeming the fee petition "untimely" and citing authority from federal cases in which a party has missed a filing deadline, our dissenting colleague argues that claimant has "cited no case law that would support an award of fees under these circumstances" and that courts "have routinely rejected attorney fee petitions and other court filings for less." *See infra* at 11. But comparing this case to examples of missed deadlines arising under other Acts is not our charge. Rather, it is to decide whether the district director acted within his discretion in awarding fees where he rationally determined that employer received the initial fee petition in 2004; was aware of the outstanding fee request at the time of the order approving stipulations in 2006; knew it would be responsible for attorney's fees; shared in the culpability for the delay in not resolving the issue; and remained responsible to pay claimant's medical expenses until she passed away in 2014.

While we might not have awarded fees on the same record, nothing in employer's petition or the dissenting opinion has convinced us that the district director decision to do

Accordingly, the district director's Compensation Order Awarding Attorney Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

I concur:

JONATHAN ROLFE
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, dissenting:

The sole issue in this case is whether the district director abused his discretion in approving three petitions for attorney's fees filed approximately ten years after the underlying award of benefits became final. For the following reasons, I would hold that the district director abused his discretion and, therefore, would reverse the award of fees.

Claimant's counsel filed his first petition for attorney's fees on January 1, 2016, more than nine years and six months after claimant was awarded medical benefits on June 23, 2006. His two amended petitions were filed in September 2016, more than ten years and three months after the award of benefits. In total, claimant's counsel's 2016 fee petitions request $11,525.00 for 46.1 hours of services performed from May 23, 1998 to July 10, 2003, and from September 1, 2004 to October 26, 2005.

In the decade between the award of benefits and the filing of his fee petitions, claimant's counsel's efforts to collect attorney's fees were sparse. His first action came

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so was wholly irrational. *Cf. Meinert v. Fraser, Inc.*, 37 BRBS 164 (2003) (abuse of discretion standard requires the Board to consider "whether there has been a clear error of judgment," because "[t]he ultimate standard of review is a narrow one"); *see also Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007) ("Review under the arbitrary and capricious standard is deferential; we will not vacate an agency's decision unless it . . . is so implausible that it could not be ascribed to a difference in view. . . ."); *Friends of Santa Clara River v. U.S. Army Corps of Engineers*, 887 F.3d 906 (9th Cir. 2018) (the arbitrary and capricious standard "require[s] only a rational connection between facts found and conclusions made").

three years and six months after the award of benefits when, in January 2010, he left voice messages for employer's counsel. He received a return message through his office manager indicating that employer's counsel would "look into it," but he did not hear back from employer and did not follow-up to discuss the matter further. After that, he waited another four years and six months to take additional action by sending a letter to employer's insurance carrier in July 2014. Hearing nothing back from the insurance carrier, claimant's counsel waited another nineteen months before filing his first fee petition.

Over employer's objections, the district director approved claimant's counsel's amended fee petitions in full because employer has not been prejudiced by the ten-year delay. He reasoned that although "there was a delay on the part of claimant's counsel in pursuing the matter," any such delay "was as much of [employer's counsel's] own doing as the claimant's counsel's doing." Compensation Order Awarding Attorney's Fees at 9-10.

Although district directors have broad discretion in determining whether to award attorney's fees, such awards should not be upheld if they are arbitrary, capricious, based on an abuse of discretion, or not in accordance with law. *Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 41 BRBS 53(CRT) (9th Cir. 2007). Reversal under an abuse of discretion standard is appropriate "when the appellate court is convinced firmly that the reviewed decision lies beyond the pale of reasonable justification under the circumstances." *Harman v. Apfel*, 211 F.3d 1172, 1175 (9th Cir. 2000). A district director "necessarily abuse[s] his discretion if [his ruling] is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Under the facts of this case, the award of attorney's fees cannot be affirmed.

The district director's finding that employer's counsel is equally responsible for the delayed filing is based primarily on the fact that claimant's counsel provided employer with a Statement of Services in July 2004 outlining some of his charges. Compensation Order Awarding Attorney's Fees at 9. Contrary to the district director's finding, however, the fact that employer "knew no later than that date that claimant's counsel was seeking remuneration" does not support an inference that employer shares responsibility for the delay in the filing of the fee petition.

The Statement of Services in question was provided to employer's counsel well before the issuance of the final award of medical benefits in June 2006, at a time when the dispute over claimant's benefits had not been resolved and no agreement or order was in place addressing employer's obligation to pay for attorney's fees. Employer's subsequent agreement to pay *some* of claimant's counsel's fees, as memorialized in the June 23, 2006 award of benefits, constitutes evidence that the parties had not in fact reached an agreement

that employer would pay claimant's counsel's fees for *all* of the services claimed as of July 2004.

Although employer agreed to "be responsible" for some of claimant's attorney's fees, the June 23, 2006 order explicitly did not resolve the amount to be paid or the periods of time for which employer would be liable. Instead, Administrative Law Judge Dorsey ordered that, "[i]f not resolved by [s]tipulation, a fee application for those fees and costs shall be submitted." Order Approving Trial Stipulations. Nothing in that order absolved claimant's counsel of his obligation to file a fee petition absent an agreement with employer or otherwise explains why claimant's counsel waited three and a half years to take any action in furtherance of reaching such an agreement. *See* 20 C.F.R. §702.132 (if "seeking a fee for services," claimant's counsel "shall make [an] application therefore to the district director").

Moreover, employer's awareness that claimant's counsel was seeking payment for some of his fees as early as July 2004 is wholly irrelevant to the services performed between September 1, 2004 and October 26, 2005. These charges post-date the Statement of Services provided to employer and thus employer was not made aware that claimant's counsel was seeking payment of these fees at that time. Additionally, despite raising the issue of attorney's fees at an informal conference on May 3, 2005, claimant's counsel did not comply with the claims examiner's instruction to "submit an updated fee request" to reflect any additional work performed after June 2004, for the purpose of allowing employer to review the request and "come to an agreement about payment of [claimant's counsel's] fees." Memorandum of Informal Conference. The first time claimant notified employer that he was seeking fees for work performed between September 1, 2004 and October 26, 2005 was when he filed his first amended petition in September 2016. Employer's counsel bears no responsibility for claimant's counsel's significant delay in requesting payment of these fees.[6]

The governing regulation at 20 C.F.R. §702.132(a) requires counsel to file a fee petition "within the time limits specified" by the appropriate adjudicator, while the June 23, 2006 order is silent as to the deadline by which claimant's counsel should have filed

[6] The district director found that employer "did not have knowledge of [these] specific hours claimed," but nevertheless held employer accountable for their payment because employer "had conceded in 2006 that it would be responsible for claimant's counsel's fees[.]" Compensation Order Awarding Attorney's Fees at 10. As explained above, however, employer's agreement to pay *some* fees subject to further negotiation and stipulation by the parties is not the equivalent of an agreement to pay *all* fees, and certainly does not encompass fees of which employer was not aware.

his fee petition. Claimant's counsel and the Director are thus correct that neither the regulations nor the June 2006 order sets a specific deadline for claimant's counsel to file his fee petition in this case. I disagree, however, that the lack of an explicit deadline means that claimant's counsel is at liberty to file his fee petition at any time, even several years or a decade later, or that the adjudicator's discretion to accept such a petition is absolute, regardless of the delay and prejudice to the opposing party.

Federal courts have consistently considered equitable factors when determining whether to accept fee petitions that are filed well after an award of benefits has become final. *See White v. New Hampshire Dep't of Emp't Sec.*, 455 U.S. 445 (1982). In *White*, a case in which no specific filing deadline applied under the governing statute or local court rules, the Supreme Court stated that the denial of an attorney's fee is appropriate "in cases in which a postjudgment motion unfairly surprises or prejudices the affected party." *Id.* at 454; *see also Baird v. Bellotti*, 724 F.2d 1032, 1033 (1st Cir. 1984) (whether court abused its discretion in denying attorney's fee "depends on whether [the] lengthy delays . . . caused sufficient prejudice"); *Inmates of Allegheny Cnty. Jail v. Pierce*, 716 F.2d 177, 179 (3d Cir. 1983) (absent a rule establishing a time limit, a fee application "should be denied as untimely if the lateness of its filing causes unfair surprise or prejudice" to the defendant); *Envtl. Def. Fund, Inc. v. Envtl. Prot. Agency*, 672 F.2d 42, 61 (D.C. Cir. 1982) (where no deadline applies, timeliness of a fee petition is governed by "traditional equitable principles").[7]

Claimant's counsel has cited no case law that would support an award of fees under these circumstances. Even if it can be said that his initial three and a half year delay in

[7] More recent federal case law has applied an "excusable neglect" standard to determine whether an untimely fee petition should be entertained. Under this standard, which is set forth in both the Federal Rules of Civil Procedure and the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, when an act "must be done within a specified time," a court "may, for good cause, extend the time . . . if the party failed to act because of excusable neglect." Fed. Rule Civ. P. 6(b)(1)(B). This is a strict standard under which judges must have "good reasons for permitting litigants to exceed deadlines." *Robinson v. City of Harvey, Ill.*, 617 F.3d 915, 918-19 (7th Cir. 2010), citing *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380 (1993). Further, the moving party bears the burden of proving that its delay is excusable. *Drippe v. Tobelinski*, 604 F.3d 778, 784 (3d Cir. 2010), citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 896 n.5 (1990).

Although the excusable neglect standard, by its terms, applies only when a litigant has missed a deadline, federal case law applying this standard remains relevant to this case because, as the Supreme Court has stated, the determination of whether to accept an

attempting resolve the outstanding fee dispute in June 2010 was reasonable, *see Epperson v. Colbert*, 679 F. App'x 410, 418-19 (6th Cir. 2017) (vacating award of fees and remanding for consideration of whether failure to file fee petition "until over three years after judgment was entered" is excusable), claimant's counsel offers no explanation for the additional six year delay. *See United States v. Munoz*, 605 F.3d 359, 372–73 (6th Cir. 2010) ("[T]he excuse given for the late filing must have the greatest import. While [the other factors] might have more relevance in a closer case, the reason-for-delay factor will always be critical to the inquiry.") (quoting *Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 463 (8th Cir. 2000)); *see also United States v. Torres*, 372 F.3d 1159, 1163 (10th Cir. 2004).

Rather, federal courts have routinely rejected attorney fee petitions and other court filings for less. *See, e.g., Robinson v. City of Harvey, Ill.*, 617 F.3d 915, 918-19 (7th Cir. 2010) (reversing award of supplemental attorney's fees where petition was filed more than 1,250 days after the initial award of fees and 275 days after the appellate decision); *Smith v. D.C.*, 430 F.3d 450, 457 (D.C. Cir. 2005) (delay of "well over a year" in filing motion for summary decision unjustified); *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 897 (1990) (affirming rejection of late-filed supplemental affidavits, as "passage of so long a time as two years suggests, if anything, that respondent . . . was more than moderately remiss in waiting until after the last moment"); *Baird*, 724 F.2d at 1033-34 (30-month delay in filing fee petition is "extraordinary" and "unjustified"); *Planet Corp. v. Sullivan*, 702 F.2d 123, 126–27 (7th Cir. 1983) (reversing district court's decision to entertain a Rule 60(b) motion, as "the year's delay in filing [the motion] was manifestly unreasonable"); *Consolidation Coal Co. v. Gooding*, 703 F.2d 230, 233 (6th Cir. 1983) (failing to respond to two communications from the Board over a five month period constitutes a "half-hearted" pursuit of an appeal, warranting a finding of abandonment).[8]

Thus, while the Board need not, and should not, establish a specific deadline for the filing of attorney's fee petitions before the district director or administrative law judge, I

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untimely filing is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Inv. Services*, 507 U.S. at 395. Thus, the necessity of considering equitable factors when deciding whether to entertain a significantly-delayed fee petition applies regardless of whether counsel has missed a specific deadline or, as in this case, waited to file his petition until nearly ten years after the underlying award of benefits became final.

[8] Claimant's counsel also does not offer a persuasive argument to undermine employer's assertion that it has been prejudiced. Employer states, and claimant does not contest, that claimant's counsel is the only remaining party with any first-hand knowledge or involvement in the original claim for medical benefits or the original agreement

have little trouble concluding that the fee petitions filed in this case, at least nine and a half years after the award of benefits became final, should not be entertained. I therefore would reverse the district director's award of attorney's fees.

GREG J. BUZZARD
Administrative Appeals Judge

regarding attorney's fees. Employer's previous counsel is no longer available, the claimant has since passed away, and Administrative Law Judge Dorsey is retired. *See Zaradnik v. The Dutra Group*, 52 BRBS __, BRB No. 18-0124 (June 19, 2018), n.1. The Director's argument that employer has actually benefitted from the delay, because it has had use of money that otherwise would have been paid to claimant's counsel ten years ago, is unavailing. Among the primary purposes of ensuring the timely filing of fee petitions is "afford[ing] an opportunity for the court to resolve fee disputes shortly after trial, while the services performed are freshly in mind[.]" *See* Fed. R. Civ. P. 54 advisory committee's note (1993); *see also Baird v. Bellotti*, 724 F.2d 1032, 1036, n.4 (1st Cir. 1984) (30-month delay in filing a fee petition "comes close to a delay so long that courts might infer prejudice simply from its length, without more"). A determination that an employer always benefits financially, and thus is never prejudiced, by the delayed filing of a fee petition would result in an open-ended ability for a claimant's counsel to file a fee petition at any time, even several years or a decade after an award of benefits becomes final.