

U.S. Department of Labor

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



BRB No. 24-0162 BLA

BARBARA FARRIS)
(o/b/o JAMES D. FARRIS))

Claimant-Petitioner)

v.)

HERITAGE COAL COMPANY)

and)

PEABODY ENERGY CORPORATION)

Employer-Respondent)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 10/30/2024

DECISION and ORDER

Appeal of the Proposed Order Supplemental Award Fee for Legal Services of Jessica Hughes, Claims Examiner, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for Claimant.

H. Brett Stonecipher and Tighe Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Proposed Order Supplemental Award Fee for Legal Services of Claims Examiner Jessica Hughes (the district director) issued with respect to an attorney fee petition filed under the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

Claimant's counsel filed a complete, itemized fee petition requesting \$4,785.00 for 24.75 hours of legal services performed before the district director between January 30, 2023 to October 18, 2023. Director's Exhibit 2. Employer and its Carrier objected to the hourly rates, as well as the number of hours worked. Director's Exhibit 4. After considering the regulatory criteria at 20 C.F.R. §725.366(b), the district director issued a Proposed Order Supplemental Award Fee for Legal Services (Supplemental Award) on January 2, 2024, reducing the requested hourly rates for attorney, paralegal, and legal assistant services. Director's Exhibit 5. The district director further reduced the number of hours requested where the work was determined to be excessive, administrative, overhead, redundant, or not necessary in the pursuant of benefits for Claimant. *Id.* Thus, the district director awarded a total fee of \$2,742.50, representing 5.75 hours of attorney services at an hourly of \$300.00, 7 hours of paralegal services at an hourly rate of \$125.00, and 1.50 hours of legal assistant services at an hourly rate of \$95.00.¹ *Id.*

Claimant timely appealed the district director's Supplemental Award to the Benefits Review Board. On April 5, 2024, the Board received Claimant's Motion to Accept Settlement Agreement on Fee Issue and Enter Order Modifying the District Director's Fee Order. In support of the motion, Claimant states the parties have agreed to a total fee of \$3,742.50 for work performed before the district director. Claimant requests the Board issue an order modifying the district director's attorney fee award consistent with the parties' agreement.

¹ The district director also reduced the hourly rate for work performed by a particular paralegal, Ms. Smith, to \$150 but reduced her hours to zero. Director's Exhibit 5 at 6.

Under the Act’s regulations, only the adjudicator “before whom the work was performed” – in this case the district director – may issue an attorney fee award for those services. 20 C.F.R. §725.367(b); *see also* 20 C.F.R. §725.366. Because the district director’s consideration of the settlement may result in a revised fee award to counsel and render moot the issues raised with respect to the existing fee order, we dismiss this appeal and remand this case to the district director with instructions to consider the proposed settlement agreement.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge