

U.S. Department of Labor

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



BRB No. 24-0163 BLA

THELMA DILLINGHAM )  
(o/b/o of JAMES W. DILLINGHAM) )

Claimant-Petitioner )

v. )

HERITAGE COAL COMPANY )

and )

PEABODY ENERGY CORPORATION )

Employer/Carrier- )  
Respondents )

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

Party-in-Interest )

**NOT-PUBLISHED**

DATE ISSUED: 09/12/2024

DECISION and ORDER

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

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

Before: GRESH, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Proposed Order Supplemental Award Fee for Legal Services of Claims Examiner Kasey Langenbacher (the district director) on an attorney fee petition filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

Claimant's counsel filed a complete, itemized fee petition requesting \$9,533.75 for 51.75 hours of legal services performed before the district director between March 9, 2020 and May 12, 2021. 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 4, 2024, finding the total number of hours claimed to be reasonable, but reducing the requested hourly rates for attorney, law clerk, paralegal, and legal assistant services. Thus, the district director awarded a total fee of \$5,925.00, representing 5.0 hours of attorney services at an hourly of \$250.00 and 46.75 hours of law clerk, paralegal, and legal assistant services at an hourly rate of \$100.00.

Claimant's counsel requested reconsideration of the attorney fee award, arguing that the reductions in the hourly rates were not supported. Further, Claimant's counsel contended the parties had agreed upon hourly rates of \$300.00 for attorney services and \$145.00 for law clerk, paralegal, and legal assistant services.<sup>1</sup> He therefore urged the district director to reconsider the Supplemental Award and issue a revised fee award in the amount of \$8,863.75 based on the agreed upon hourly rates.

On January 24, 2024, the district director summarily denied Claimant's request for reconsideration. Claimant filed a timely appeal of the district director's Supplemental Award with the Benefits Review Board.

By letter dated February 7, 2024, the Board acknowledged Claimant's appeal of the district director's Supplemental Award. 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 \$7,425.00 for work performed before the district director. Claimant requests the Board issue an order instructing the district director to modify the attorney fee award consistent with the parties' agreement.

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<sup>1</sup> It is not apparent if the agreement referenced in Claimant's counsel's request for reconsideration to the district director is applicable to the work performed in this case as it involves hourly rates agreed to by the parties in a settlement agreement in other black lung cases between Peabody Coal Company and the federal government. *See* January 22, 2024 Letter to Claims Examiner Requesting Reconsideration at 1-2 (unpaginated).

Under the Black Lung Act 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.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge