

BRB No. 99-0348 BLA

CLIFFORD PRIDEMORE)	
)	
Claimant)	
)	
v.)	
)	
PEABODY COAL COMPANY)	
)	
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	DATE ISSUED:
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney's Fee of Mollie W. Neal, Administrative Law Judge, United States Department of Labor.

Robert R. Kaplan (Arter & Hadden), Washington, D.C., for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney's Fee (96-BLA-1443) of Administrative Law Judge Mollie W. Neal awarding claimant's counsel's request for attorney fees filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge found claimant's counsel entitled to a fee of \$7,488.00 for 27.20 hours of services at an hourly rate of \$200.00 and for 12.80 hours of services performed by claimant's counsel's associate counsel at an

hourly rate of \$160.00, plus \$474.75 in costs and expenses. On appeal, employer contends that the hourly rate approved by the administrative law judge was excessive. Neither claimant or the Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, has responded to this appeal.

The standard of review for the Board in analyzing an appellant's arguments on appeal of an attorney fee determination is whether the determination is arbitrary, capricious or an abuse of discretion, see *Abbott v. Director, OWCP*, 13 BLR 1-15 (1989), citing *Marcum v. Director, OWCP*, 2 BLR 1-894 (1980). All fee petitions must be filed with, and approved by, the adjudicating officer or tribunal before whom the services were performed. 20 C.F.R. §§725.365; 725.366(a); see *Abbott, supra*; *Helmick v. Director, OWCP*, 9 BLR 1-161 (1986); *Vigil v. Director, OWCP*, 8 BLR 1-99 (1985). The adjudicating officer must discuss and apply the regulatory criteria at 20 C.F.R. §725.366 in determining the fee award due, if any. See *Lenig v. Director, OWCP*, 9 BLR 1-147 (1986).

Claimant's counsel requested a fee of \$8,200.50 for 41.00 hours of services performed before the administrative law judge by himself and an associate counsel at an hourly rate of \$200.00, plus \$474.75 in costs and expenses. Employer responded, contending that claimant's counsel's fee application should be dismissed because claimant's counsel did not sufficiently provide information as to the standard hourly rate he charged in non-contingent cases or as to the standard hourly rate charged by attorneys of similar experience for similar services in claimant's counsel's locality.

The administrative law judge found that claimant's counsel's inability to provide precise information relevant to his standard hourly rate in non-contingent cases was not so essential to the administrative law judge's determination as to require dismissal of his fee petition. The administrative law judge found that there was sufficient documentation in the record upon which a determination regarding a reasonable hourly rate may be made pursuant to 20 C.F.R. §725.366(b). Supplemental Decision and Order at 3-4. The administrative law judge also found that forty of the 41.00 hours claimed by claimant's counsel were reasonable and necessary, Supplemental Decision and Order at 5.

Moreover, after consideration of the nature of the issues involved, the high degree of skill with which claimant was represented, the amount of time and work involved and the protracted nature of the proceedings, the administrative law judge found the hourly rate of \$200.00 to be a reasonable and appropriate hourly rate for the services rendered. The administrative law judge noted that claimant's counsel was a partner in his firm with twenty years of experience under the Act and that he

had compared the hourly rate claimed by claimant's counsel with the standard billing rates of partners in the firms the size of claimant's counsel's in the Northeast Region where he practices law pursuant to the Altman Weil Pensa 1996 Survey of Law Firm Economics. However, the administrative law judge found that claimant's counsel's associate counsel does not possess the same level of experience and found that a more reasonable and appropriate hourly rate for him would be \$160.00. Decision and Order at 5-6. Consequently, the administrative law judge found claimant's counsel entitled to a fee of \$7,488.00 for 27.20 hours of services at an hourly rate of \$200.00 and for 12.80 hours of services performed by claimant's counsel's associate counsel at an hourly rate of \$160.00, plus \$474.75 in costs and expenses.

Employer contends that the hourly rates approved by the administrative law judge were excessive in light of the fact that claimant's counsel never provided evidence as to the rates he typically charged clients in non-contingent workers' compensation cases or the rates typically charged by other lawyers from similarly sized firms in similar cases in his community in Logan, West Virginia. Employer further contends that the Altman Weil Pensa 1996 Survey of Law Firm Economics cited by the administrative law judge also does not indicate that the Northeast Region includes West Virginia, nor does it make any distinction between large and small firms.

We reject employer's contention that the hourly rate awarded by the administrative law judge was excessive. After consideration of the factors contained at Section 725.366(b), the administrative law judge awarded claimant's counsel his requested hourly rate of \$200 and awarded claimant's counsel's associate counsel an hourly rate of \$160. While employer contends that claimant's counsel did not provide sufficient information for the administrative law judge to make a determination as to the hourly rate, employer has not established that the rate awarded was excessive or that the administrative law judge abused his discretion in this regard, *generally Broyles v. Director, OWCP*, 974 F.2d 508, 17 BLR 2-1 (4th Cir. 1992); *Pritt v. Director, OWCP*, 9 BLR 1-159 (1986); *see also Jones v. Badger Coal Co.*, 21 BLR 1-102 (1998)(*en banc*)(affirming an administrative law judge's award of an hourly rate of \$200 in a case arising within the jurisdiction of the United States Court of Appeals for the Fourth Circuit).

Accordingly, the Supplemental Decision and Order Awarding Attorney's Fee is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge