



BRB No. 15-0361 BLA

RICHARD R. CRUM)	
)	
Claimant-Respondent)	
)	
v.)	
)	
ROBERT COAL COMPANY)	
)	
and)	
)	
OLD REPUBLIC INSURANCE)	DATE ISSUED: 07/12/2017
COMPANY, INCORPORATED)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	ORDER on
)	RECONSIDERATION
Party-in-Interest)	and AWARD of FEES

As a majority of the panel has not affirmatively voted to vacate or modify the decision herein, the motion for reconsideration filed by employer is DENIED. 33 U.S.C. §921(b)(5); 20 C.F.R. §§801.301(b); 802.407(a); 802.409.

Claimant’s counsel has filed an itemized statement requesting a fee for services performed before the Board pursuant to 20 C.F.R. §802.203. Counsel requests a fee of \$3,181.25 for 3.25 hours of legal services at an hourly rate of \$425.00 (Joseph E. Wolfe), 0.75 hours of legal services at an hourly rate of \$200.00 (Brad A. Austin), and 11.0 hours of legal services at an hourly rate of \$150.00 (Rachel Wolfe).

Employer objects to the hourly rates of \$425.00 and \$200.00 as not market based and excessive. Employer argues that the rates are not reflective of the prevailing market, and

they are unsupported and unreasonable. Employer requests that the hourly rates be reduced to \$200.00 and \$100.00 for Mr. Wolfe and Mr. Austin respectively.

In support of his fee petition, counsel has provided a list of seventy-eight black lung cases where the Office of Administrative Law Judges, the Board, and the United States Courts of Appeals for the Fourth and Sixth Circuits have awarded attorney fees to his firm. The list includes one case from August 2008, where the Board affirmed an award from the Office of Administrative Law Judges in which Mr. Wolfe received an hourly rate of \$400.00. In a second case from January 2016, an administrative law judge awarded Mr. Wolfe an hourly rate of \$425.00, but noted that no objections were filed.¹ Counsel also cites to a third case in 2016, wherein a circuit court awarded Mr. Wolfe an hourly rate of \$425.00.² In the remaining seventy-five cases submitted, Mr. Wolfe has been awarded an hourly rate of \$300.00. Seventeen of these seventy-five cases were decided in 2015 and 2016. This list also includes four recent cases where Mr. Austin was awarded an hourly rate of \$200.00.

The United States Court of Appeals for the Fourth Circuit has recognized that evidence of fees received in the past may be an appropriate consideration in establishing a market rate. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 290, 24 BLR 2-269, 2-291 (4th Cir. 2010). As counsel has not presented sufficient evidence to support his request for an hourly rate of \$425.00, the Board finds that an hourly rate of \$300.00 for Mr. Wolfe is reasonable, based on the evidence submitted and the prevailing market rate in the area. *Id.* However, the Board finds that the hourly rate of \$200.00 for Mr. Austin is reasonable, based on the evidence submitted and the prevailing market rate in the area. Additionally, the Board finds the requested hourly rate of \$150.00 for Ms. Wolfe is reasonable.

Employer also contends that the Board should disallow 2.75 hours of the 3.25 hours billed by Mr. Wolfe for reviewing routine documents. Employer's Response at 9. We decline to do so. Claimant's counsel reasonably billed .25 hours for each entry, as

¹ In his Supplemental Order Awarding Fees, the administrative law judge questioned Mr. Wolfe's requested hourly rate, and stated that he would carefully consider any objections to the hourly rate in any future fee petition from Mr. Wolfe's firm. *Hall v. Cody Mining Co.*, 13-BLA-5499 (Jan. 26, 2016).

² Counsel inaccurately identifies the 2016 circuit court order as having been issued by the United States Court of Appeals for the Sixth Circuit. Claimant's Fee Petition at 11. In fact, the United States Court of Appeals for the Fourth Circuit issued the Order. In that case, the Fourth Circuit noted that counsel's motion for attorney's fees was unopposed. *Donaldson Mine Co. v. Hinzman*, No. 16-1185 (Apr. 13, 2016) (Order).

a quarter-hour increment is the minimum billing increment set forth in the applicable regulation. 20 C.F.R. §802.203(d)(3); *see E. Associated Coal Corp. v. Director, OWCP* [Gosnell], 724 F.3d 561, 576, 25 BLR 2-359, 2-383-84 (4th Cir. 2013); *B & G Mining, Inc. v. Director, OWCP* [Bentley], 522 F.3d 657, 666, 24 BLR 2-106, 2-127 (6th Cir. 2008).

Accordingly, we award claimant's counsel an attorney's fee of \$2,775.00 for 3.25 hours of legal services at an hourly rate of \$300.00 (Joseph E. Wolfe), 0.75 hours of legal services at an hourly rate of \$200.00 (Brad A. Austin), and 11.0 hours of legal services at an hourly rate of \$150.00 (Rachel Wolfe), to be paid directly to claimant's counsel by employer. 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §802.203.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge