U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0294 BLA

EUGENE WAYNE STURGILL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DOUBLE M COAL COMPANY	)	DATE ISSUED: 11/28/2016
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Award of Benefits of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Award of Benefits (2013-BLA-05050) of Administrative Law Judge Daniel F. Solomon, rendered on a subsequent claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-

944 (2012) (the Act).[1] The relevant procedural history is as follows. In his Decision and Order issued on April 28, 2015, the administrative law judge credited claimant with at least fifteen years in underground coal mine employment. The administrative law judge found that claimant suffered from a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2) and, therefore, demonstrated a change in an applicable condition of entitlement under 20 C.F.R. §725.309. Based on these determinations, and the filing date of the claim, the administrative law judge concluded that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] Moreover, the administrative law judge found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits commencing September 2010.

Employer initially appealed the Decision and Order, arguing that the administrative law judge's use of the preamble to the 2001 revised regulations in evaluating the medical opinions was improper, and that he applied the wrong rebuttal standard, failed to consider relevant evidence, and erred in rejecting the opinions of Drs. Rosenberg and Fino in finding that employer failed to rebut the Section 411(c)(4) presumption. Additionally, employer contended that the administrative law judge erred in determining the date for commencement of benefits. Claimant responded, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), did not file a response brief. Employer filed a reply brief, reiterating its argument.

Upon review of employer's appeal, the Board issued a per curiam Decision and Order affirming the award of benefits and modifying the date for their commencement. *Sturgill v. Double M Coal Co.*, BRB No. 15-0294 BLA (May 24, 2016) (unpub.). Employer filed a timely motion for reconsideration of the Board's Decision and Order,

[1] Claimant's next most recent claim, filed on August 28, 2009, was denied by the district director on March 8, 2010, because claimant failed to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Director's Exhibit 5. Claimant took no further action with regard to that denial of benefits, until he filed the current subsequent claim on December 22, 2011. Director's Exhibit 6.

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

arguing that it should be vacated because one member of the three member panel should not have participated in deciding the appeal. Employer asserted that the member had entered an appearance as counsel for the Director, while previously employed as a staff attorney for the Office of the Solicitor's Division of Black Lung and Longshore Legal Services. Employer requested that it be dismissed as a party to the proceeding, with liability for benefits transferring to the Black Lung Disability Trust Fund (Trust Fund). The Director responded, and maintained that the proper resolution for employer's appeal was to have it reconsidered by a different panel of the Board. Claimant also responded, arguing that the Board should deny employer's motion for reconsideration.

The Board granted employer's request for reconsideration and the relief sought in part, by vacating the Board's May 24, 2016 Decision and Order. *Sturgill v. Double M Coal Co.*, BRB No. 15-0294 BLA (Sept. 22, 2016) (Order) (unpub.). However, the Board denied employer's request that liability be transferred to the Trust Fund, and ordered that employer's appeal of Judge Solomon's Decision and Order dated April 28, 2015 be assigned to a different panel for consideration of the arguments raised. *Id*. This Decision and Order now follows.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

I. REBUTTAL OF THE SECTION 411(C)(4) PRESUMPTION

Because claimant invoked the Section 411(c)(4)[4] presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that claimant has neither legal[5] nor clinical[6] pneumoconiosis, or by

[3] Because claimant's coal mine employment was in Virginia, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 7.

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established at least fifteen years of underground coal mine employment, a totally disabling respiratory or pulmonary impairment under 20 C.F.R. §718.204(b)(2), invocation of the Section 411(c)(4) presumption, and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6-7.

[5] Legal pneumoconiosis includes "any chronic lung disease or impairment and its

establishing that "no part of [claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting).

The administrative law judge observed that in order to rebut the presumed fact of legal pneumoconiosis, employer must establish that claimant "does not have a lung disease 'significantly related to, or substantially aggravated by, dust exposure in coal mine employment' by a preponderance of the evidence." Decision and Order at 7, *quoting* 20 C.F.R. §718.201(b). The administrative law judge noted that employer relied on Drs. Rosenberg and Fino to disprove the existence of legal pneumoconiosis, each of whom opined that claimant has a disabling respiratory impairment, in the form of chronic obstructive pulmonary disease (COPD)/emphysema due entirely to cigarette smoking, with no contribution from coal dust exposure. Employer's Exhibits 1, 5, 6, 7. The

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sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The regulation also provides that "a disease 'arising out of coal mine employment' includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or *substantially aggravated by*, dust exposure in coal mine employment." 20 C.F.R. §718.201(b) (emphasis added).

[6] Clinical pneumoconiosis is defined as:

> [T]hose diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

administrative law judge determined that the opinions of Drs. Rosenberg and Fino were not sufficiently reasoned to satisfy employer's burden of proof.[7]

Contrary to employer's arguments, we see no error in the administrative law judge's rejection of Dr. Rosenberg's opinion that claimant does not have legal pneumoconiosis. Employer's Exhibit 1. The administrative law judge correctly noted that in eliminating coal dust exposure as a causative factor for claimant's disabling respiratory impairment, Dr. Rosenberg discussed the pulmonary function testing and "thought [claimant's] marked bronchodilator response was consistent with smoking as opposed to a coal mine dust related form of obstruction." Decision and Order at 10 (internal citations omitted); Employer's Exhibit 1. The administrative law judge correctly observed, however, that while claimant's "post-bronchodilator scores from Dr. Rosenberg's testing yielded evidence of some reversibility, they still produced qualifying values under the regulations" and, therefore, claimant "continued to demonstrate a residual, irreversible, and *totally disabling* respiratory impairment." *Id.* (emphasis added). We conclude that the administrative law judge acted within his discretion in giving less weight to Dr. Rosenberg's opinion on the ground that Dr. Rosenberg "failed to explain why partial post-bronchodilator improvement indicated that [claimant's] COPD was caused solely by cigarette smoking." *Id.*; *see Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 532, 21 BLR 2-323, 2-334 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997).

With regard to both Dr. Rosenberg and Dr. Fino, the administrative law judge noted correctly that each physician relied on claimant's "significantly reduced diffusion capacity" as support for their opinions that claimant does not have legal pneumoconiosis. Decision and Order at 10; Employer's Exhibits 1, 6. The administrative law judge accurately described that Drs. Rosenberg and Fino considered this type of respiratory impairment to be representative of a diffuse form of emphysema related to smoking and not coal dust exposure. *Id.* The administrative law judge permissibly concluded, however, that this rationale was not sufficient to disprove legal pneumoconiosis because "simply stating that [claimant's] reduced diffusing capacity 'correlates with the diffuse emphysema developing in relationship to cigarette smoking' does not adequately explain why [claimant's] emphysema, in particular, was not at all *aggravated* by his significant history of coal dust exposure." Decision and Order at 10 (emphasis added), *quoting*

[7] The administrative law judge did not render specific findings on the issue of clinical pneumoconiosis, but stated that "this record does not provide a basis for a finding of clinical pneumoconiosis[.]" Decision and Order at 13.

Employer's Exhibit 1; *see* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich*, 25 BLR at 1-155 n.8.

As the trier-of-fact, the administrative law judge has discretion to assess the credibility of the medical opinions, based on the explanations given by the experts for their diagnoses, and to assign those opinions appropriate weight. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324, 25 BLR 2-255, 2-258 (4th Cir. 2013) (Traxler, C.J., dissenting); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 315-16, 25 BLR 2-115, 2-130 (4th Cir. 2012). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). Because it is supported by substantial evidence, we affirm the administrative law judge's findings that the opinions of Drs. Rosenberg and Fino are insufficient to establish that claimant does not have legal pneumoconiosis. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

Additionally, employer contends that the case must be remanded for the administrative law judge to consider the treatment notes from Pulmonary Associates of Morristown, where claimant was seen by Dr. Mejia. Employer asserts that this evidence is relevant to rebuttal because, while Dr. Mejia treated claimant for respiratory impairments, "at no time did he mention coal dust exposure as a source of any impairment or disease. He mentioned cigarette smoking." Employer's Brief in Support of Petition for Review at 21. Contrary to employer's characterization, however, on September 1, 2011, Dr. Mejia diagnosed "[s]evere COPD" and implicated both "[t]obacco use" and "[e]xposure to coal mines." Director's Exhibit 15. As employer bears the burden of proof on rebuttal to affirmatively establish that claimant does not have legal pneumoconiosis, and because Dr. Mejia did not specifically exclude coal dust exposure as a cause of claimant's respiratory or pulmonary impairment, any error by the administrative law judge in failing to discuss the treatment records is harmless. *See Bender*, 782 F.3d at 138-43; *Morrison*, 644 F.3d at 479, 25 BLR at 2-8; Director's Exhibit 15. Thus, we affirm, as supported by substantial evidence, the administrative law judge's finding that employer failed to establish rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(i), by establishing that claimant does not have pneumoconiosis.[8] *See Bender*, 782 F.3d at 137; *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

[8] Employer contends that the administrative law judge erred in stating that the Department of Labor "has rendered legislative facts that smoking and the effects from mining are 'additive' and it is expected that smoking and mining can exacerbate or aggravate the effects from one another." Decision and Order at 13; Employer's Brief in

Regarding whether employer disproved the presumed fact of disability causation, there is no merit to employer's assertion that the administrative law judge applied the wrong rebuttal standard by requiring it to "rule out" pneumoconiosis as a cause of claimant's disability. Employer's Brief in Support of Petition for Review at 11-16. The regulations specifically require the party opposing entitlement to establish that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201" and the United States Court of Appeals for the Fourth Circuit has explicitly upheld application of the "rule out" standard. 20 C.F.R. §718.305(d)(1)(ii); *Bende*r, 782 F.3d at 137-43; *see Big Branch Resources, Inc. v. Ogle*, 737 F.3d 1063, 1070-71, 25 BLR 2-431, 2-446-47 (6th Cir. 2013); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939, 2 BLR 2-38, 2-43-44 (4th Cir. 1980).[9]

Support of Petition for Review at 19. Because the administrative law judge provided valid reasons for rejecting the opinions of Drs. Rosenberg and Fino, we consider any error in the administrative law judge's statement to be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Furthermore, we decline to address employer's contention that the administrative law judge misapplied the preamble in evaluating the medical opinions, as we affirm the administrative law judge's rejection of the opinions of Drs. Rosenberg and Fino on the alternate grounds discussed *infra*. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[9] Employer argues that the administrative law judge failed to consider that claimant had a disabling heart condition that prevented him from returning to work. Employer maintains that a pre-existing disability or co-existing nonrespiratory impairment precludes claimant from receiving benefits under the Act. Employer's Brief in Support of Petition for Review at 21-22, *citing, inter alia, Peabody Coal Co. v. Vigna*, 22 F.3d 1388, 18 BLR 2-215 (7th Cir. 1994). Contrary to employer's argument, the Board has declined to apply *Vigna* outside of the jurisdiction of the United States Court of Appeals for the Seventh Circuit, and other circuits have held that a pre-existing disability or co-existing non-respiratory impairment does not defeat entitlement to benefits under the Act if the miner is able to establish total disability due to pneumoconiosis. *See e.g., Cross Mountain Coal Co. v. Ward*, 93 F.3d 211, 216-17, 20 BLR 2-362, 2-370-71 (6th Cir. 1996). In this case, total disability due to pneumoconiosis has been established through invocation of the Section 411(c)(4) presumption. Moreover, in claims such as this one, filed after January 19, 2001, the applicable regulation states that a nonpulmonary condition that causes an independent disability unrelated to the miner's pulmonary disability "shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis." 20 C.F.R. §718.204(a); *see*

As we have affirmed the administrative law judge's findings that the opinions of Drs. Rosenberg and Fino are not adequately explained to establish that claimant's disabling respiratory or pulmonary impairment is not legal pneumoconiosis, we also affirm the administrative law judge's finding that these same opinions are insufficient to establish that "no part" of claimant's respiratory or pulmonary disability is due to pneumoconiosis, as defined at 20 C.F.R. §718.201. 20 C.F.R. §718.305(d)(1)(ii); *Hicks*, 138 F.3d at 532, 21 BLR at 2-334; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. We therefore affirm, as supported by substantial evidence, the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption under 20 C.F.R. §718.305(d)(1)(ii). *See Bender*, 782 F.3d at 137; *Minich*, 25 BLR at 1-159. Thus, we affirm the award of benefits.

II. DATE FOR THE COMMENCEMENT OF BENEFITS

Once entitlement to benefits is established, the date for the commencement of benefits is determined by the month in which the miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503; *Lykins v. Director, OWCP*, 12 BLR 1-181, 1-182 (1989). If the date of onset of total disability due to pneumoconiosis is not ascertainable from all the relevant evidence of record, benefits will commence with the month during which the claim was filed, unless evidence credited by the administrative law judge establishes that claimant was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *Green v. Director, OWCP*, 790 F.2d 118, 119 n.4, 9 BLR 2-32, 2-36 n.4 (4th Cir. 1986); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-50 (1990).

In considering the date from which benefits should commence, the administrative law judge summarily stated that "[a] review of all of the evidence shows that the miner was disabled when he applied in September, 2010." Decision and Order at 15. Employer does not challenge the administrative law judge's finding that claimant is entitled to benefits as of the month in which he filed his subsequent claim, but instead argues that the administrative law judge erred in identifying the month of filing as September 2010, and not December 2011. We agree with employer. Because the administrative law judge misstated the month and year in which the subsequent claim was filed (i.e., December 2011), we modify the administrative law judge's Decision and Order to reflect that benefits are payable as of December 2011. Director's Exhibit 6.

Ward, 93 F.3d at 216-17, 20 BLR at 2-370-71; *Gulley v. Director, OWCP*, 397 F.3d 535, 538-39, 23 BLR 2-242, 2-248-49 (7th Cir. 2005).

III. ATTORNEY FEE AWARD

Claimant's counsel has filed an itemized fee petition requesting a fee for legal services performed in this appeal pursuant to 20 C.F.R. §802.203. Counsel requests a total fee of $2,543.75 representing: $956.25 for 2.25 hours of legal services by Joseph E. Wolfe, Esq., at an hourly rate of $425; $350 for 1.75 hours of legal services by Brad A. Austin, Esq., at an hourly rate of $200; and, $1,237.50 for 8.25 hours of legal services by Rachel Wolfe, Esq., at an hourly rate of $150. Employer objects to counsel's hourly rate as excessive and not market based. Employer further challenges the number of hours requested by counsel.

The Act provides that when a claimant prevails in a contested case, the employer, its insurer, or the Black Lung Disability Trust Fund shall pay a "reasonable attorney's fee" to claimant's counsel. 30 U.S.C. §932(a), incorporating 33 U.S.C. §928(a). An application seeking a fee for legal services performed on behalf of a claimant must indicate the customary billing rate of each person performing the services. 20 C.F.R. §725.366(a). The regulations also provide that an approved fee must take into account "the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to which the claim was raised, the level at which the representative entered the proceedings, and any other information which may be relevant to the amount of the fee requested." 20 C.F.R. §725.366(b).

In determining the amount of attorney's fees to award under a fee-shifting statute, the United States Supreme Court has held that a court must determine the number of hours reasonably expended in preparing and litigating the case and then multiply those hours by a reasonable hourly rate. This sum constitutes the "lodestar" amount. *Pa. v. Del. Valley Citizens' Council for Clean Air*, 478 U.S. 546, 563 (1986). According to the Court, a reasonable hourly rate is "to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *see generally B & G Mining, Inc. v. Director, OWCP* [*Bentley*], 522 F.3d 657, 663, 24 BLR 2-106, 2-121 (6th Cir. 2008) (defining "reasonable hourly rate" as "the rate that lawyers of comparable skill and experience can reasonably expect to command within the venue of the court of record."). The fee applicant has the burden to produce satisfactory evidence "that the requested rates are in line with those prevailing in the community for similar services by lawyers of comparable skill, experience, and reputation." *Blum*, 465 U.S. at 896 n.11.

Employer contends that Mr. Wolfe has not submitted sufficient evidence to support an hourly rate of $425. In support of his fee petition, Mr. Wolfe submitted a letter detailing the education and experience of Mr. Austin and Ms. Wolfe, a page from the 2014 Survey of Law Firm Economics published by The National Law Journal, and a

list of seventy-eight black lung cases in which the Office of Administrative Law Judges, the Board, and the United States Courts of Appeals for the Fourth and Sixth Circuits have awarded attorney's fees to his firm. This list includes one case from August 2008, in which the Board affirmed a fee award from the Office of Administrative Law Judges granting Mr. Wolfe an hourly rate of $400, and a more recent case in which the administrative law judge awarded counsel an hourly rate of $425.[10] Counsel also identified a case from the Sixth Circuit, contending that the Sixth Circuit approved an hourly rate of $425 on January 26, 2016. In response, employer has identified a case in which the "Sixth Circuit specifically rejected Mr. Wolfe's claim that his hourly rate was $425, finding it lacked persuasive evidence that such a rate reflected the prevailing market rate[.]" Employer's Objection to Application for Attorney's Fees at 7. In the remaining seventy-five cases listed, Mr. Wolfe has been awarded an hourly rate of $300. The list also includes four recent cases in which Mr. Austin was awarded an hourly rate of $200 and Ms. Wolfe was awarded an hourly rate of $150.

The Fourth Circuit has held that, in calculating the lodestar amount, it is permissible to rely on prior fee awards as evidence of a prevailing market rate. *See E. Associated Coal Corp. v. Director, OWCP* [*Gosnell*], 724 F.3d 561, 572, 25 BLR 2-359, 2-375-76 (4th Cir. 2013) ("[P]rior fee awards constitute evidence of a prevailing market rate that may be considered in fee-shifting contexts, including those prescribed by [the Act]."); *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 290, 24 BLR 2-269, 2-291 (4th Cir. 2010). In this case, however, Mr. Wolfe did not present sufficient evidence of prior awards to justify an hourly rate of $425, and the Board therefore rejects his request for an hourly rate of $425 for legal services performed in this case. The Board finds the hourly rate of $300 for Mr. Wolfe to be reasonable, based on prior awards cited by counsel in his fee petition, and the evidence submitted of the prevailing market rate in his practice area. Additionally, the Board finds the hourly rate of $200 for Mr. Austin and the hourly rate of $150 for Ms. Wolfe to be reasonable, based on the evidence submitted regarding their qualifications, legal experience, and the prevailing market rate for their practice area.

Employer also objects to the number of hours charged as unreasonable, arguing that the 2.25 hours Mr. Wolfe billed for reviewing routine correspondence is excessive. Upon review of the fee petition, we reject employer's challenge to the time charged by Mr. Wolfe, because the services constitute compensable legal work that was not excessive, duplicative, or unreasonable in this case. *See Bentley*, 522 F.3d at 664, 24

[10] In the case cited by claimant, *Hall v. Cody Mining Co.*, 2013-BLA-05449 (Jan. 26, 2016), the administrative law judge questioned Mr. Wolfe's requested hourly rate, noted that the employer in that case did not object to it, and stated that he would carefully consider any objections to the hourly rate requested in future fee petitions from his firm.

BLR at 2-123; *Lanning v. Director, OWCP*, 7 BLR 1-314 (1984).[11] 33 U.S.C. §928; 20 C.F.R. §802.203.

[11] An attorney's fee award does not become effective, and is thus unenforceable, until there is a successful prosecution of the claim and the award of benefits becomes final. *Coleman v. Ramey Coal Co.*, 18 BLR 1-9, 1-17 (1995).

Accordingly, the Decision and Order Award of Benefits is affirmed. In addition, claimant's counsel is awarded a fee of $2,262.50 for work before the Board, representing 2.25 hours of legal services by Joseph E. Wolfe at an hourly rate of $300, 1.75 hours of legal services by Brad A. Austin at an hourly rate of $200, and 8.25 hours of legal services by Rachel Wolfe at an hourly rate of $150, 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.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge