U.S. Department of Labor

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

BRB No. 18-0086

ROBERT MACHER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	DATE ISSUED: 10/30/2018
JACK GRAY TRANSPORT, INCORPORATED	)	
	)	
Self-Insured Employer-Petitioner	)	DECISION and ORDER

Appeal of the Attorney Fee Order of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Holly Lutz, Wausau, Wisconsin, for claimant.

Scott A. Soule and Emily C. Canizaro (Blue Williams, L.L.P.), Mandeville, Louisiana, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Attorney Fee Order (2011-LHC-01840) of Administrative Law Judge Alice M. Craft rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless it is shown by the challenging party to be arbitrary, capricious, based on an abuse of discretion or not in accordance with law. *See Jeffboat, L.L.C. v. Director, OWCP [Furrow]*, 553 F.3d 487, 42 BRBS 65(CRT) (7th Cir. 2009).

Claimant sustained a work-related back injury in 1998. In 2001, Administrative Law Judge Mosser awarded claimant ongoing permanent partial disability benefits. In December 2006, employer requested modification of the award, but the parties resolved the matter on October 16, 2008, shortly before the scheduled hearing with Judge Tureck. In requesting that the hearing be cancelled, the parties stated that a fee petition was forthcoming; however, no fee petition was filed, and Judge Tureck remanded the case to the district director on February 5, 2009.

On January 31, 2011, employer again requested modification of the award, alleging claimant was no longer disabled. On February 18, 2011, claimant filed his own motion for modification, asserting entitlement to a greater award. During the pendency of this action, the case was forwarded to the Office of Administrative Law Judges (OALJ), remanded by Judge Kirby to the district director, and forwarded again to the OALJ. In 2016, Administrative Law Judge Craft (the administrative law judge) issued a Decision and Order awarding claimant permanent total disability benefits. The decision was not appealed.

On October 27, 2016, Attorney Lutz (or "counsel") filed a fee petition on behalf of Attorney Lenz (Lenz Petition).[1] Lutz requested $12,015.05, representing 30.2 hours of attorney services at an hourly rate of $350 ($10,570) and $1,445.05 in costs incurred between December 11, 2006 and February 5, 2009. On November 23, 2016, employer filed objections to this petition.

Lutz subsequently revised the Lenz Petition and filed several fee petitions for the services she performed. On behalf of Lenz, the final petition appears to request $11,189.65, representing 23.2 hours of Lenz's services at an hourly rate of $425 ($9,860) and $1,329.65 in costs incurred between September 13, 2007 and February 5, 2009. *See* June 2017 Declaration at 5; May 2017 Petition at 28; CX J. With respect to her own services, Lutz's final petition appears to request $259,271.74, representing: 501.51 hours of attorney services at $425 per hour ($213,141.75); 113.25 hours of paralegal services at $135 per hour ($15,288.75); 53.92 hours of "other support staff" services at $60 per hour ($3,235.20); and $18,681.04 in costs incurred between March 26, 2010 and March 11, 2011 and between July 15, 2011 and September 26, 2016; and 21 hours of attorney time at $425 per hour ($8,925) for preparing the fee petitions and responding to employer's objections

[1] Lenz represented claimant in the first proceeding before Judge Mosser (1998-2001), and employer paid him an attorney's fee for those services. Lenz represented claimant in the first modification proceeding, December 11, 2006 – February 5, 2009, but became ill during this time. Lutz, who works for a different law firm, took over the case on March 30, 2009.

and sur-reply after these dates.[2] June 2017 Declaration at 6; CX I-3 at 7. In the course of responding to Lutz's pleadings, employer argued that the confusing fee petition should be denied in its entirety; it objected to the requested hourly rates, number of hours, and amount of costs; and it asserted that fees for services performed before the district director must be excluded. In so doing, employer pointed out many of the computation errors rampant throughout Lutz's pleadings.

The administrative law judge found that Lenz and Lutz are entitled to employer-paid attorney's fees for their successful prosecution of claimant's modification claim, and she rejected employer's assertions regarding the adequacy of the fee petitions. She further found that the case was pending before the OALJ between September 11, 2006 and February 5, 2009, and between April 1, 2010[3] and September 26, 2016. She determined that hourly rates of $350 and $130 are reasonable market rates for attorney and paralegal services, and she awarded these rates for all compensable services to account for the delay in payment. The administrative law judge found all hours and costs requested on behalf of Lenz to be reasonable, and she awarded Lenz a fee of $12,015.05 for 30.2 hours of his services ($10,570) and $1,445.05 in costs incurred between December 11, 2006 and February 5, 2009.

With respect to Lutz, the administrative law judge conducted her own accounting of itemizations contained in CX C[4] to find counsel sought a fee for 494.96 attorney hours, 118.34 paralegal hours, 47.22 other hours and $16,390.75 in costs incurred between April 1, 2010 and September 26, 2016.[5] The administrative law judge further found Lutz

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[2] Lutz requested that all fees for services rendered in this case be awarded at her current 2017 rates in order to compensate for the delay between the time services were rendered and fees awarded. May 2017 Petition at 28; June 2017 Petition at 3.

[3] Although the Decision and Order specifies "April 1, 2012" as "the date this case was transferred to the Office of Administrative Law Judges," the itemizations contained in CX C, on which the administrative law judge relied, specifies that the case was transferred to the OALJ on April 1, 2010. *See* CX C.

[4] Lutz attached CX C to the fee petition she filed on February 23, 2017. This exhibit itemizes all services rendered and costs incurred, both before the OWCP and OALJ, by Lutz in this case. Although Lutz submitted a revised itemization of costs, CX I-3, on June 6, 2017, the administrative law judge did not explain her reliance on CX C to calculate costs.

[5] The administrative law judge did not explicitly identify Lutz's requested costs. We arrive at this figure by adding the administrative law judge's stated deductions to the

requested an additional 27 hours of attorney time for preparing the fee petition and responding to employer's objections and sur-reply. The administrative law judge denied 21.15 hours[6] of Lutz's time, 1.88 hours of paralegal time, all 47.22 hours of "other" support staff services, and $1,280.21 in costs. The administrative law judge awarded Lutz a fee of $207,983.84, representing 487.81 hours of attorney time ($170,733.50), 116.46 hours of paralegal time ($15,139.80), and $15,110.54 in costs incurred between April 1, 2010 and September 26, 2016,[7] and 20 hours of attorney time spent thereafter on the fee petition pleadings ($7,000).

Employer appeals, challenging the sufficiency of the fee petitions as well as the attorney hourly rate, number of hours, and amount of costs awarded to Lenz and Lutz.[8] Claimant responds, urging affirmance.[9] Employer replied.

Employer initially contends the administrative law judge erred in failing to deny the petitions in their entirety for failure to conform to the requirements of 20 C.F.R.

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costs she awarded to Lutz: $\$1,280.21_{\text{costs deducted}} + \$15,110.54_{\text{costs awarded}} = \$16,390_{\text{costs requested}}$. *See* n.7, *infra*.

[6] The administrative law judge denied 14.15 hours of time itemized in CX C between April 1, 2010 and September 26, 2016, as well as 7 of the 27 hours she believed Lutz requested for preparing the fee petitions and responding to employer's objections and sur-reply.

[7] The administrative law judge did not separate the award of costs to Lenz from the costs awarded to Lutz. We arrive at this figure by subtracting the Lenz costs from the total costs awarded: $\$16,555.59_{\text{costs awarded}} - \$1,445.05_{\text{Lenz costs}} = \$15,110.54_{\text{costs awarded Lutz}}$.

[8] We affirm, as unchallenged on appeal, the hourly rate award of $130 for all paralegal services. *See Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

[9] Claimant additionally asks the Board to: 1) enhance the hourly rate awarded to account for the additional delay incurred as a result of employer's appeal; 2) reverse the administrative law judge's denial of $524 in meal expenses; and, 3) award fees for services rendered between March 26, 2010 and April 1, 2012, that the administrative law judge allegedly excluded in determining that the case was pending before the OALJ from April 1, 2012 through September 26, 2016, rather than from March 26, 2010 through September 26, 2016. As counsel did not file a cross-appeal, and these arguments do not support the administrative law judge's decision, we decline to address these contentions. 20 C.F.R. §802.212(b); *see Reed v. Bath Iron Works Corp.*, 38 BRBS 1 (2004).

§702.132(a).[10] With regard to Lenz, employer asserts that the petition does not conform to the requirement that a fee application be made by the "person seeking a fee for services performed on behalf of a claimant" because it lacks authentication from Lenz himself. We disagree. As the administrative law judge stated, there is no requirement that a fee petition be accompanied by an affidavit. Order at 3; *see McCloud v. George Hyman Constr. Co.*, 11 BRBS 194 (1979). Further, the administrative law judge rationally found CX A of the Lenz Petition represents a true itemization of Lenz's services based on the affidavit of Attorney Spector, Lenz's former partner and now sole shareholder of Spector & Lenz, PC, affirming that the petition is consistent with the services documented by Lenz in his office case file. Order at 3-4; CX E at 1-3. Thus, as the administrative law judge also accurately observed that Lutz detailed Lenz's experience and qualifications, she rationally found that the petition on behalf of Lenz conforms to the requirements of 20 C.F.R. §702.132(a). *See Cuevas v. Ingalls Shipbuilding Corp.*, 5 BRBS 739, 741 (1977). Employer has not shown that the administrative law judge abused her discretion in this regard. *See* 20 C.F.R. §702.132; *see also Collins v. Oceanic Butler, Inc.*, 23 BRBS 227, 228-229 (1990); *Shoemaker v. Schiavone & Sons, Inc.*, 20 BRBS 214, 218 (1988).

We additionally reject employer's assertion that the mathematical errors contained in counsel's pleadings renders Lutz's fee application non-compliant with 20 C.F.R.

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[10] The regulation at 20 C.F.R. §702.132(a) provides:

> Any person seeking a fee for services performed on behalf of a claimant with respect to claims filed under the Act shall make application therefor to the district director, administrative law judge, Board, or court, as the case may be, before whom the services were performed (See 33 U.S.C. 928(c)). The application shall be filed and serviced upon the other parties within the time limits specified by such district director, administrative law judge, Board, or court. The application shall be supported by a complete statement of the extent and character of the necessary work done, described with particularity as to the professional status (e.g., attorney, paralegal, law clerk, or other person assisting an attorney) of each person performing such work, the normal billing rate for each such person, and the hours devoted by each such person to each category of work. Any fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded, and when the fee is to be assessed against the claimant, shall also take into account the financial circumstances of the claimant. No contract pertaining to the amount of a fee shall be recognized.

§702.132(a). This regulation does not require fee applications be filed as a single document or be free from mathematical errors, although, certainly, such is more desirable practice. As the administrative law judge accurately observed that Lutz provided an itemization of time billed, the professional status of each person performing the work, and the customary hourly billing rate of each person performing the work, she rationally found that Lutz's application conforms to the regulatory requirements governing attorney fee applications. Order at 3; *see* 20 C.F.R. §702.132; *Forlong v. American Security & Trust Co.,* 21 BRBS 155 (1988). Consequently, the administrative law judge rationally accepted the Lenz and Lutz petitions in their entirety, and we affirm this action.

Employer next challenges the administrative law judge's hourly rate award of $350 to Lenz and Lutz. Employer asserts that the rate is excessive and unsupported by the documentation offered and the law.

In awarding an attorney's fee, the starting point is the "lodestar," whereby a court multiplies the number of hours reasonably worked by a reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424 (1983);[11] *Furrow*, 553 F.3d 487, 42 BRBS 65(CRT). "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-896 (1984); *see also Perdue v. Kenny A.*, 559 U.S. 542, 551 (2010). The burden is on the fee applicant to produce satisfactory evidence that the requested hourly rates are in line with those prevailing in the community of practitioners for similar services by lawyers of comparable skill, experience, and reputation. *Furrow*, 553 F.3d at 490-491, 42 BRBS at 67(CRT); *Stanhope v. Electric Boat Corp.*, 44 BRBS 107, 108 (2010); *see also Blum*, 465 U.S. at 896 n.11; *Christensen v. Stevedoring Services of America*, 557 F.3d 1049, 1053, 43 BRBS 6, 8(CRT) (9th Cir. 2009); *Westmoreland Coal Co. v. Cox*, 602 F.3d 276 (4th Cir. 2010). The United States Court of Appeals for the Seventh Circuit, within whose jurisdiction this case arises, recognizes a national market for longshore services and has held that an attorney's actual billing rate for comparable work is presumptively appropriate for use as a market rate when making a lodestar calculation. *Furrow*, 553 F.3d at 490-491, 42 BRBS at 67(CRT).

Although Lutz ultimately requested an hourly rate of $425 for her and Lenz's work, she stated in the Lenz Petition, filed in October 2016, that $350 per hour represents her current billing rate. Lenz Petition at 7, 16. Considering this statement in conjunction with her assessment of the quality of counsel's representation in this case, and upon reviewing the parties' evidence and positions, as well as prior fee awards in Longshore cases, the

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[11] The Supreme Court admonishes that fee requests should not result in second major litigations. *Hensley*, 461 U.S. at 437.

administrative law judge found $350 per hour represents a reasonable market rate for the attorney services rendered in this case.[12] Order at 6. We reject employer's contention that this finding is not supported by the record.

Contrary to employer's assertion, Lutz's reference to hourly rate awards of between $340 and $400 for services rendered between 2010 and 2016 to attorneys with less or comparable experience supports the administrative law judge's determination.[13] *See Furrow*, 553 F.3d at 490, 42 BRBS at 67(CRT); CX D at 4-5; May 2017 Petition at 21. Moreover, the affidavit of Timothy O. Malloy and the United States Consumer Law Attorney Fee Survey Report by Ronald Burdge, Esq., substantiate an hourly rate of $350 as being in line with local market rates for specialized legal services.[14] *Furrow*, 553 F.3d at 491, 42 BRBS at 67(CRT); *see generally also Christensen v. Stevedoring Services of America*, 557 F.3d 1049, 43 BRBS 6(CRT) (9th Cir. 2009); *B&G Mining, Inc. v. Director, OWCP*, 522 F.3d 657, 42 BRBS 25(CRT) (6th Cir. 2008). Employer's reference to lower awards, which the administrative law judge considered, Order at 6, and its assertion that this case lacked complexity do not discredit counsel's market rate evidence. *See Furrow*, 553 F.3d at 491, 42 BRBS at 67(CRT); *see generally Van Skike v. Director, OWCP*, 557 F.3d 1041, 43 BRBS 11(CRT) (9th Cir. 2009) (complexity is not a market rate factor). Thus, as the $350 hourly rate awarded falls within the range of rates established by the documentation counsel submitted, employer has not shown that the administrative law judge abused her discretion in awarding this rate. *Furrow*, 553 F.3d at 490-491, 42 BRBS at 67(CRT); *see generally Fox v. Vice,* 131 S.Ct. 2205, 2216 (2011). As employer raises no further challenges to the administrative law judge's hourly rate award, we affirm the award of $350 per hour to Lenz and Lutz for all compensable attorney services in this case.

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[12] Although Lenz billed less than $350 per hour in 2007-2009 when he rendered services, the administrative law judge compensated him at Lutz's current market rate to account for the delay in payment for his services. Order at 6.

[13] Contrary to employer's assertions, hourly rate awards in Defense Base Act claims and to attorneys practicing in coastal states are relevant evidence of market rates in comparable cases as the Seventh Circuit has recognized a national market of Longshore practitioners. *See Furrow*, 553 F.3d at 490, 42 BRBS at 67(CRT).

[14] The Malloy affidavit affirms that, as of November 2016, experienced workers' compensation defense attorneys in Indiana charged $250 to $350 per hour. CX F. The United States Consumer Law Attorney Fee Survey Report, which counsel referenced, establishes that, regardless of experience, the 2013 average hourly rate for consumer law attorneys in Wisconsin was $387. May 2017 Petition at 5.

Employer next asserts the administrative law judge improperly awarded fees and costs to Lenz for work performed while this case was pending before the district director. Employer asserts that, contrary to the administrative law judge's finding, the OALJ gained jurisdiction over this case on September 13, 2007, and the administrative law judge therefore erred in awarding an attorney's fee and costs for work performed between December 11, 2006 and September 12, 2007, when the case was pending before the Office of Workers' Compensation Programs (OWCP). As the itemizations in CX A and revised fee petition pleadings support the commencement of OALJ jurisdiction on September 13, 2007, and as the administrative law judge awarded Lenz a fee for seven hours of services ($2,450) and $115.40 in costs prior to this date, we agree with employer that the administrative law judge improperly included these services and costs in her award. CX A; *see Fitzgerald v. RCA Int'l Corp.*, 15 BRBS 345 (1983) (letter of referral from the district director to the OALJ provides the best indication of the date informal proceedings terminated). Consequently, we modify the administrative law judge's award of $12,015.05 for 30.2 hours and $1,445.05 in costs to Lenz by deducting $2,565.40. Lenz is entitled to an employer-paid fee award of $9,449.85, representing 23.2 hours of services rendered at an hourly rate of $350 ($8,120) and $1,329.85 in costs incurred before the OALJ between September 13, 2007 and February 5, 2009.

Employer makes several contentions regarding the administrative law judge's award to Lutz of 507.81 hours of attorney time, 116.46 hours of paralegal time, and $15,110.54 incurred costs between April 1, 2010 and September 26, 2016. Employer first asserts the administrative law judge erred in awarding $509 in costs that are duplicate expenses. Employer did not object to any costs as being duplicative while this case was before the administrative law judge. Therefore, we decline to address this argument as it is first raised on appeal. *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988).

We agree, however, that the administrative law judge erred in failing to address employer's objection to costs and expenses that were not accompanied by a receipt or proof of payment. In its April 2017 Objections, employer objected to $3,281.20 in costs and expenses that lacked receipts;[15] however, the administrative law judge did not address this objection in awarding $15,110.54 in costs to Lutz.[16] To the extent the administrative law

[15] It is unclear how employer reached this sum as it did not specify which costs lacked receipts or provide its own calculations. Further, although employer's appellate brief objects to $4,438.98 in costs without a receipt, employer's calculations are premised on Lutz's revised cost itemizations in CX I-3, rather than CX C, on which the administrative law judge relied. Emp. Br. at 17 n.80.

[16] In reducing the amount of Lutz's requested costs from $16,390.75 to $15,110.54, the administrative law judge denied, as non-compensable, the following $1,280.21 in

judge implicitly rejected it, she erred in failing to explain her basis for finding these costs to be reasonable. *See, e.g., Steevens v. Umpqua River Navigation,* 35 BRBS 129 (2001); *Jensen v. Weeks Marine,* 33 BRBS 97 (1999); *Devine v. Atlantic Container Lines, G.I.E.,* 23 BRBS 279 (1990). Consequently, we vacate the administrative law judge's award of $15,110.54 in costs to Lutz and remand the case for further consideration of the petition and employer's objections. In so doing, the administrative law judge must address Lutz's itemization of costs contained in CX I-3 and CX C and make a finding as to which itemization is correct. If she finds CX I-3 represents the correct itemization of costs, she must revise her calculations and award accordingly.

Employer also asserts the administrative law judge erred in failing to reduce the 62.04 hours Lutz billed for work on her post-trial and reply briefs. We reject this assertion. The administrative law judge explicitly rejected employer's argument and found the time billed to be reasonable in light of "the complexity of the case, number of issues addressed, and amount of evidence involved in the successful prosecution of the case." Order at 10. In challenging this finding on appeal, employer states only that the time is excessive and should be reduced by at least half. Emp. Br. at 17. Employer's unsupported allegation fails to show that the administrative law judge abused her discretion. *See Zeigler Coal Co. v. Director, OWCP*, 326 F.3d 894, 902 (7th Cir. 2003); *see also Collins*, 23 BRBS at 228-229.

Employer next contends the administrative law judge erred in awarding a fee for counsel's travel between Wisconsin, where Lutz's practice is located, and Indiana, where the case was tried, because the travel was unreasonable.[17] Employer contends counsel's fees for travel are unreasonable because she failed to show that local counsel was unavailable or incapable of properly handling the case. Employer further asserts there is no indication that the administrative law judge considered the evidence it presented as to the availability of local counsel.

Fees for attorney travel time and expenses are compensable where the travel is reasonable, necessary, and in excess of that normally considered to be part of overhead. *See Brinkley v. Department of the Army/NAF*, 35 BRBS 60, 64 (2001); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 43 (2000); *Griffin v. Virginia Int'l Terminals, Inc.*, 29 BRBS 133 (1995); *Swain v. Bath Iron Works Corp.,* 14 BRBS 657 (1982). The Board has

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itemized costs: $364 for attending a workers' compensation conference; $370.67 for postage and office supplies, and $545.54 for meals while traveling.

[17] Specifically, employer urges the Board to reduce the number of attorney and paralegal hours awarded by 12.85 and 47.47, respectively, for travel related to this case.

held in this regard that an attorney's travel may be found to be unreasonable where the claimant retains counsel from outside the area in which he resides despite the availability of competent counsel experienced with the Act within the claimant's locality. *See Swain*, 14 BRBS at 666-67; *Lopes v. New Bedford Stevedoring Corp.*, 12 BRBS 170 (1979).

In finding that Lutz's travel between Wisconsin and Indiana was reasonable, the administrative law judge explicitly considered and rejected employer's contention regarding local counsel, stating that claimant and Lutz were unable to find a local attorney to take over claimant's case after Lenz became ill and that employer's list of attorneys does not guarantee their availability. Order at 9. As the Seventh Circuit recognizes a national market for Longshore services, and as the administrative law judge considered employer's evidence, employer has not established an abuse of discretion in finding Lutz's travel between Wisconsin and Indiana to be reasonable and necessary. *See Furrow*, 553 F.3d at 490, 42 BRBS at 67(CRT). There being no other challenge to the travel fee, we affirm the administrative law judge's award of a fee for this time, as well as the costs for this travel. *See id.*; *Brinkley*, 35 BRBS at 64; *O'Kelley*, 34 BRBS at 43.

We agree with employer that the administrative law judge erroneously awarded a fee for services rendered while this case was before the district director in the spring of 2011, however. *Stratton v. Weedon Engineering Co.*, 35 BRBS 1 (2001) (*en banc*); *Revoir v. General Dynamics Corp.*, 12 BRBS 524 (1980). Lutz asserted the OWCP had jurisdiction over the case from March 11, 2011, when Judge Kirby denied reconsideration and remanded the case to the OWCP, through July 15, 2011, when the district director transferred the case to the administrative law judge. CXs I, I-3. As employer concedes in its appellate brief that these dates correctly represent the OWCP's jurisdiction over the case, Emp. Br. at 15, the administrative law judge erred in awarding a fee for services during this period. *Stratton*, 35 BRBS 1. Thus, we vacate the fee award to Lutz and remand the case for further consideration. On remand, the administrative law judge should disallow a fee for any services performed between March 11 and July 15, 2011.

We also agree with employer that the administrative law judge erred in failing to address its objections to 4.65 attorney hours for services rendered between May 21, 2010 and April 7, 2014. Specifically, employer objected to services on May 21, 2010, October 25 and November 22, 2011, June 24, 2013, "'12/30/99' b/t 1/8 and 1/9/14," and March 13 and April 7, 2014, as unnecessary/unrelated to this claim, vague, or part of overhead.[18] Emp. Opp. at 15-16 (May 25, 2017). Although the administrative law judge excluded 5.15 attorney hours and 1.21 paralegal hours for those reasons, she did not address these objections. To the extent the administrative law judge implicitly found employer's

[18] Claimant responded to each of these objections in her May 2017 Petition.

objections lack merit, she erred in failing to explain this finding. On remand, the administrative law judge must address employer's objections, as well as claimant's responses thereto and explain her conclusions. *See, e.g., Steevens,* 35 BRBS 129; *Jensen,* 33 BRBS 97; *Devine,* 23 BRBS 279.

In summary, we affirm the administrative law judge's hourly rate award of $350 to Lenz and Lutz for services rendered in this case. We modify the fee awarded to Lenz to exclude the services rendered while this case was before the OWCP and to reflect employer's liability for a fee to Lenz of $9,449.85, representing 23.2 hours of services rendered at an hourly rate of $350 ($8,120) and $1,329.85 in costs incurred before the OALJ between September 13, 2007 and February 5, 2009. We vacate the fee awarded to Lutz, and we remand the case for the administrative law judge to reconsider the number of attorney hours, paralegal hours, and the amount of costs to be awarded to Lutz. On remand, the administrative law judge must disallow all services rendered while this case was before the OWCP. She also must address the issues identified in accordance with this decision, considering counsel's fee petitions and employer's objections, and she must explain her findings.

Accordingly, the administrative law judge's Attorney Fee Order is affirmed in part, modified in part, and vacated in part, and the case is remanded for further consideration consistent with this decision.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge