



BRB No. 20-0264 BLA  
Case No. 2017-BLA-05929

JAMES R. CLARK	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DOMINION COAL CORPORATION	)	
	)	
and	)	
	)	
NEW HAMPSHIRE	)	
INSURANCE/CHARTIS	)	
	)	
Employer/Carrier-	)	
Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	ORDER

Claimant’s counsel has filed a complete, itemized statement requesting a fee for services performed before the Benefits Review Board pursuant to 20 C.F.R. §802.203. Counsel requests a fee of \$950.00 representing \$350 for 1.00 hour of legal services at an hourly rate of \$350.00 for Attorney Joseph E. Wolfe, \$200 for 1.00 hour of legal services at an hourly rate of \$200.00 for Attorney Brad A. Austin, \$50 for 0.25 hour of legal services at an hourly rate of \$200.00 for Attorney Rachel Wolfe, and \$350 for 3.50 hours for work performed by a legal assistant at an hourly rate of \$100.00. Employer and its carrier (Employer) object that the hourly rates are not market based, and request that the fees be reduced.

In support of his fee petition, counsel has provided a list of seventy black lung cases in which the district director, the Office of Administrative Law Judges (OALJ), the Board, and the United States Court of Appeals for the Fourth Circuit awarded attorney fees to his firm.<sup>1</sup>

Fifty-four of the cases include fees awarded for Mr. Wolfe's work. The list includes one case from August 2008 in which the Board affirmed an award where Mr. Wolfe received an hourly rate of \$400.00 for work performed before the OALJ. In six cases, an administrative law judge (ALJ) awarded Mr. Wolfe an hourly rate of \$425.00, but noted that no objections were filed.<sup>2</sup> In two other cases, the Fourth Circuit awarded Mr. Wolfe an hourly rate of \$425.00. *Donaldson Mining Co. v. Hinzman*, No. 16-1185 (4th Cir. Apr. 13, 2016) (Order);<sup>3</sup> *S. Ohio Coal Co. v. Weaver*, No. 16-1580 (4th Cir. July 11, 2016) (Order). Of the remaining cases submitted, Mr. Wolfe was awarded an hourly rate of \$350.00 on twenty occasions, \$325.00 on three occasions, and \$300.00 on twenty-two occasions.

Evidence of fees received in the past provides some guidance as to what the market rate is, and is appropriately included within the range of sources from which to ascertain a reasonable rate.<sup>4</sup> See *E. Associated Coal Corp. v. Director, OWCP [Gosnell]*, 724 F.3d

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<sup>1</sup> Counsel further argues that his requested rates are reasonable in light of the experience and qualifications of the representatives, their passion for their work, and the lack of attorneys taking similar cases.

<sup>2</sup> In a Supplemental Order Awarding Fees in *Hall v. Cody Mining Co.*, 2013-BLA-05449 (Jan. 26, 2016) (Order), the ALJ 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 his firm. In the Orders Awarding Fees in *Young v. James River Coal Co.*, 2014-BLA-05168 (July 25, 2015) (Order), *Wright v. Shipyard River Coal Terminal Co.*, 2016-BLA-05166 (Nov. 7, 2016) (Order), *Muncy v. Dir., OWCP*, 2013-BLA-06086 (Jan. 17, 2017) (Order), *Lee v. Cody Mining Co., Inc.*, 2012-BLA-05365 (Jan. 20, 2017) (Order), and *Fortney v. Dir., OWCP*, 2014-BLA-00014 (Jan. 24, 2017) (Order), the ALJ noted that no objection was filed.

<sup>3</sup> Counsel inaccurately identifies the 2016 circuit court order as having been issued by the United States Court of Appeals for the Sixth Circuit. In fact, the United States Court of Appeals for the Fourth Circuit issued this 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 (4th Cir. Apr. 13, 2016) (Order).

<sup>4</sup> Counsel also submitted a one-page extract from The National Law Journal's 2014 Survey of Law Firm Economics, which purportedly shows that the average hourly billing

561, 572 (4th Cir. 2013); *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 290 (4th Cir. 2010); *see also B & G Mining, Inc. v. Director, OWCP [Bentley]*, 522 F.3d 657, 664 (6th Cir. 2008). Based on the documentation submitted in this case, counsel has demonstrated that he has been awarded the hourly rate of \$350.00 for work performed before the OALJ in twenty cases between August 2016 and March 2017. The Board notes these fee awards are more recent than those in which counsel was awarded a lower rate, and are therefore more representative of the hourly rate that counsel is entitled to for the work performed during the time that this case was before the Board. The Board therefore finds the requested hourly rate of \$350.00 to be reasonable in light of the quality of representation, the complexity of the issues involved, and the area where the services were rendered.

In the thirty-seven listed cases in which Mr. Austin was awarded a fee, he was awarded an hourly rate of \$200.00. The Board finds the hourly rate of \$200.00 for Mr. Austin is reasonable, based on the evidence submitted and the prevailing market rate in the area. Employer does not specifically challenge the hourly rate of \$200.00 for Ms. Wolfe. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Therefore, the Board grants the hourly rate of \$200.00 for Ms. Wolfe as unopposed. In the fifty listed cases in which a legal assistant was awarded a fee, the legal assistant was awarded an hourly rate of \$100.00. The Board finds that the hourly rate of \$100.00 for the services of a legal assistant is reasonable, based on the evidence submitted and the prevailing market rate in the area.

We also find the overall attorney's fee request to be reasonable and commensurate with the necessary services performed in defending the awards of benefits.<sup>5</sup> 20 C.F.R. §802.203(e).

Therefore, we award Claimant's counsel a total fee of fee of \$950.00 for 1.00 hour of legal services at an hourly rate of \$350.00 for Attorney Joseph E. Wolfe, 1.00 hour of legal services at an hourly rate of \$200.00 for Attorney Brad A. Austin, 0.25 hour of legal services at an hourly rate of \$200.00 for Attorney Rachel Wolfe, and 3.50 hours for work performed by a legal assistant at an hourly rate of \$100.00, to be paid directly to Claimant's

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rate for an attorney with thirty-one or more years of experience in the South-Atlantic Region is \$426.00. However, the extract does not indicate the distribution of participating law firms, and the Board is not persuaded that this chart sufficiently establishes the market rate for Mr. Wolfe.

<sup>5</sup> There is no merit to Employer's challenge to the quarter-hour billing method. 20 C.F.R. §802.203(e); *see B & G Mining, Inc. v. Director, OWCP [Bentley]*, 522 F.3d 657, 666-67 (6th Cir. 2008).

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.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge