BRB No. 05-0159 BLA

THELMA FRISCH, on behalf of SYLVESTER E. FRISCH, deceased	)	
Claimant-Respondent	)	
v.	)	
PEABODY COAL COMPANY	)	
and	)	
OLD REPUBLIC INSURANCE COMPANY	)	DATE ISSUED: 01/30/2006
Employer/Carrier-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits and the Supplemental Decision and Order Awarding Attorney Fees of Pamela Lakes Woods, Administrative Law Judge, United States Department of Labor.

Sandra Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

W. William Prochot (Greenberg Traurig, LLP), Washington, D.C., for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (03-BLA-0162) and the Supplemental Decision and Order Awarding Attorney Fees of Administrative Law

Judge Pamela Lakes Wood, on a duplicate miner's claim[1] 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).[2] This case is before the Board for a third time. The procedural history for the claim was set forth in *Frisch v. Peabody Coal Co.*, BRB No. 00-1158 BLA (Nov. 30, 2001) (unpub.), and is incorporated by reference herein. The Board previously vacated an award of benefits issued by Administrative Law Judge Thomas M. Burke, and remanded the case for consideration of the evidence relevant to the amended disability causation standard set forth at 20 C.F.R. §718.204(c).[3] In his Decision and Order on Remand dated May 22, 2002, Judge Burke determined that Dr. Cohen's opinion was sufficient to establish that the miner's pneumoconiosis was a substantially contributing cause of his total disability. Accordingly, Judge Burke awarded benefits. Employer filed an appeal with the Board, which was dismissed at employer's request in order for it to pursue modification. *Frisch v. Peabody Coal Co.*, BRB No. 02-0647 BLA (Order) (Sept. 30, 2002). On March 19, 2003, the district director forwarded employer's modification request to the Office of Administrative Law Judges where it was reassigned to Administrative Law Judge Pamela Lakes Wood (the administrative law judge). Following a formal hearing held on November 19, 2003, and

[1] The miner filed his initial claim on January 28, 1992, which was denied by the district director on August 6, 1992. Director's Exhibit 27. The miner filed a duplicate claim on September 10, 1994. Director's Exhibit 1. During the course of litigation on his duplicate claim, the miner died on June 13, 2001. Employer's Exhibits 1, 14. The miner's widow, Thelma Frisch, is pursuing the claim on his behalf and is referred to as "claimant" in this decision. We note that Mrs. Frisch filed a survivor's claim for benefits, which was voluntarily withdrawn, and therefore the miner's duplicate claim is the only claim at issue in this case. *See* 20 C.F.R. §725.306(b).

[2] The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2004). The amendments to the regulations at 20 C.F.R. §§ 725.309 and 725.310, do not apply to claims, such as this, which were pending on January 19, 2001. *See* 20 C.F.R. §725.2. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3] The Board affirmed the finding of Administrative Law Judge Thomas M. Burke that the miner established a material change in conditions under 20 C.F.R. §725.309(d) (2000), the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) (2000) based on the opinion of Dr. Cohen, and that the miner was totally disabled pursuant to 20 C.F.R. §718.204(c) (2000). *See Frisch v. Peabody Coal Co.*, BRB No. 00-1158 BLA (Nov. 30, 2001) (unpub.).

the submission of additional evidence by both parties, the administrative law judge issued her decisions, which are the subject of the instant appeal. The administrative law judge determined that employer failed to establish a basis for modification of Judge Burke's award of benefits. The administrative law judge further found that claimant established all of the requisite elements of entitlement. Accordingly, the administrative law judge awarded benefits and attorney fees.

Employer has filed a Combined Petition for Review and Brief, alleging that the administrative law judge failed to properly conduct a *de novo* review of the evidence on modification. Employer maintains that the administrative law judge's material change analysis was contrary to applicable law. Employer challenges the administrative law judge's finding that claimant established the existence of legal pneumoconiosis, and her determination that claimant's total respiratory disability was due to pneumoconiosis. Employer also alleges that the administrative law judge erred in assigning controlling weight to Dr. Cohen's opinion as compared to employer's medical experts, Drs. Tuteur, Renn and Repsher. Lastly, employer objects to the award of attorney fees. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief.

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. 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).

Pursuant to Section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §922, as incorporated into the Act by 30 U.S.C. §932(a) and as implemented by 20 C.F.R. §725.310 (2000), a party may request modification of the terms of an award or denial of benefits within one year on the grounds that a change in conditions has occurred or a mistake in a determination of fact was made in the prior decision. *See* 20 C.F.R. §725.310 (2000). Because employer initiated modification proceedings in this case, employer bore the burden of persuasion in establishing a basis for modification of Judge Burke's award of benefits. *Branham v. BethEnergy Mines, Inc.*, 20 BLR 1-27, 1-34 (1996).

Employer contends on appeal that the administrative law judge failed to conduct a *de novo* review of the evidence to determine whether there had been a mistake in a determination of fact. Employer's Brief at 15. Employer further contends that the administrative law judge erroneously "adopted wholesale findings from Judge Burke's decisions that the Board had vacated and she relied on those same rationales to resolve conflicts in the newly submitted proof." Employer's Brief at 15-16.

Employer's contentions are without merit. In addressing the modification issue, the administrative law judge correctly noted in her Decision and Order that, while employer did not clarify in its closing argument brief what aspects of Judge Burke's prior award of benefits that it sought to modify, she would reconsider all of the issues which had been before Judge Burke to determine whether employer established a mistake in a determination of fact.[4] The administrative law judge also specifically stated in her decision that her findings of fact and conclusions of law were based on her independent analysis of the entire record, including all documentary evidence admitted. We agree with claimant's counsel that the administrative law judge "could not have possibly provided such an insightful discussion on the problems with the posture of this case without having first reviewed the entire record." Claimant's Brief at 10. The administrative law judge's command of the record is demonstrated by her identification of documents in the record which had not been properly marked as exhibits, her discussion of the procedural history, and her review of all of the prior decisions by both Judge Burke and the Board. She further identified all of the evidence submitted on modification and pointed to the evidence outlined in the Pre-hearing Reports submitted by the parties.[5] The mere fact that the administrative law judge agreed with Judge Burke's prior determinations, and referenced the Board's prior holdings in this case, does not render her analysis of the case any less than a *de novo* review. Employer's general contention that it did not receive a fair weighing of the evidence reflects only employer's discontent with the outcome of the case.

Because this case involved a duplicate miner's claim, the administrative law judge revisited Judge Burke's finding that claimant established a material change in conditions.

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[4] The administrative law judge noted that since "the [m]iner continued to decline in health up until the time of his death, and there was no improvement in his pulmonary or respiratory condition, [e]mployer has not asserted a basis for modification based upon a change in conditions." Decision and Order at 7. We affirm the administrative law judge's finding that employer did not allege a change in conditions pursuant to 20 C.F.R. §725.310 as that finding is unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[5] The administrative law judge noted that the evidence submitted on modification consists of a pathology report by Dr. Murphy dated August 8, 2001, based upon a June 14, 2001 autopsy, a pathology report by Dr. Osterling, supplemental opinions by Drs. Dahhan, Tuteur, Renn and Cohen, a new report from Dr. Repsher, medical records from Dr. Tse and St. Elizabeth's Hospital, and transcripts of the depositions of Drs. Repsher, Renn, and Tuteur. Decision and Order at 6; *see* Employer's Exhibits 2, 3, 5-15; Claimant's Exhibits 1, 2.

The United States Court of Appeals for the Seventh Circuit, within whose jurisdiction this case arises, has held that a material change in conditions is established pursuant to Section 725.309(d) (2000) where the miner did not have pneumoconiosis at the time of the prior application for benefits but has since contracted it and become totally disabled by it, or where the miner's pneumoconiosis has progressed to the point of total respiratory disability since the filing of the prior application, *see Sahara Coal Co. v. Director, OWCP* [*McNew*], 946 F.2d 554, 15 BLR 2-227 (7th Cir. 1991).[6] Moreover, in order to prevail on a duplicate claim, a claimant must show that something capable of making a difference has changed since the record closed in the first claim, *i.e.*, at least one element that might independently have supported a decision against the claimant has now been shown to be different, *Peabody Coal Co. v. Spese*, 117 F.3d 1001, 21 BLR 2-113 (7th Cir. 1997) (en banc rehearing), *modifying*, 94 F.3d 369 (7th Cir. 1996), *and affirming* 19 BLR 1-45 (1995).

In his Decision and Order on Remand dated August 7, 2000, Judge Burke determined that the evidence developed in conjunction with the miner's duplicate claim established a material change in condition because the miner was able to establish his total respiratory disability, an element of entitlement that had been denied in his prior claim.[7] Reviewing Judge Burke's prior decision, the administrative law judge found no mistake of fact with Judge Burke's evaluation of the medical evidence. Decision and Order at 9. The administrative law judge also properly noted that the Board previously affirmed Judge Burke's determination that the miner established a material change in condition. *Frisch*, BRB No. 00-1158, slip op at 5-6; Decision and Order at 9.

The Board has specifically rejected employer's prior argument that Judge Burke applied an incorrect material change analysis, and declines to revisit that issue in this

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit, as the miner's last coal mine employment occurred in Illinois. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 1.

[7] Judge Burke noted that the miner's first claim was denied because he failed to establish a respiratory or pulmonary impairment. The evidence in conjunction with the prior claim included an invalid pulmonary function study and a non-qualifying arterial blood gas study. In contrast, with respect to the miner's duplicate claim, Judge Burke found that there was a qualifying arterial blood gas study and that. "virtually all of the physicians who addressed the issue concluded that [c]laimant suffers from a totally disabling respiratory or pulmonary impairment." Decision and Order on Remand (August 14, 2000) at 5.

appeal.[8] *Frisch*, BRB No. 00-1158 BLA, slip. op. at 5-6; s*ee generally Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990). Judge Wood properly relied on the same evidence as Judge Burke to find that a material change in the miner's respiratory condition occurred from the time the miner filed his first claim to the time of his duplicate claim based on the deterioration of his respiratory status to the point of total disability. Decision and Order at 8-9. We affirm as supported by substantial evidence, the administrative law judge's finding that there was no mistake in a determination of fact at 20 C.F.R. §725.309 (2000). Because the administrative law judge's analysis is consistent with applicable law, we further affirm her finding that claimant established a material change in conditions.[9] *See Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (199), *modified on recon.*, 16 BLR 1-71 (1992); Decision and Order at 9.

After finding that claimant established a material change in conditions, the administrative law judge properly focused her attention on the merits of entitlement in the miner's claim.[10] The administrative law judge considered both the old and new evidence and found that claimant established that the miner suffered from legal pneumoconiosis, and that this condition substantially contributed to the miner's total respiratory disability.

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[8] Employer argues that there was no material change in the miner's respiratory condition because even Dr. Cohen conceded that earlier arterial blood gas studies may have shown abnormalities. Employer's Brief at 20. We note, however, that despite these earlier "abnormalities" on arterial blood gas testing, the miner's test values did not qualify for total respiratory disability, and therefore the miner was unable to establish a requisite element of entitlement in his prior claim.

[9] The administrative law judge also evaluated the newly submitted evidence on modification and found that it did not "shows any improvement in the [m]iner's pulmonary or respiratory condition…." Decision and Order at 9. The administrative law judge found that the miner "was clearly incapable of performing his previous coal mine employment on a pulmonary or respiratory basis during any subsequent period of time, up until the time of his death," and thus she concluded that there was no mistake in fact in Judge Burke's determination of a material change in condition. *Id.*

[10] In order to establish entitlement to benefits under Part 718 in this living miner's claim, it must be established that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of his coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3; 718.202; 718.203; 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). Failure to prove any one of these elements precludes entitlement. *Trent*, 11 BLR at 1-26.

We reject employer's contention that the administrative law judge summarily dismissed its modification evidence relevant to the issues of legal pneumoconiosis and causation as being cumulative. Employer's Brief at 16. All of the prior evidence and new modification evidence submitted by both parties was admitted into the record and considered by the administrative law judge. In addressing the new medical reports and deposition testimony proffered by both employer and claimant, the administrative law judge permissibly observed that the new opinions of all of the physicians of record, including Drs. Renn, Dahhan, Tuteur and Cohen were "essentially cumulative of their previous ones, except for their more extensive discussions of the epidemiological evidence."[11] Decision and Order at 12. This statement was entirely correct. We note that none of the physicians have changed their positions on whether or not the miner's chronic obstructive pulmonary disease (COPD) was due entirely to smoking or a combination of the effects of smoking and coal dust exposure. The evidence presented on modification centers around the debate among these physicians as to how to interpret the medical literature and epidemiological studies conducted regarding the effects of smoking and coal dust exposure on coal miners in general. *See* Employer's Exhibits 2, 3, 5-15; Claimant's Exhibits 1, 2.

In weighing the conflicting medical opinion evidence, the administrative law judge acknowledged that claimant bore the burden of proving that the miner's obstructive respiratory impairment was due to coal dust exposure in order to establish the presence of legal pneumoconiosis, and that claimant further had to prove that COPD due to coal dust exposure was a substantially contributing factor leading to the miner's total respiratory disability. The administrative law judge had discretion to credit Dr. Cohen's interpretation of the various epidemiological studies, and his opinion that claimant's COPD arose out of coal mine employment; she found that Dr. Cohen had "cogently responded to each of the arguments and criticism made by [e]mployer's experts." Decision and Order at 13, n. 22. The administrative law judge specifically noted:

> I have reviewed the discussion of the epidemiological evidence as applied to the instant case by all of the reviewing physicians and I find that of Dr. Cohen to be most persuasive…. What I do find to be of significance is the highly persuasive nature of Dr. Cohen's most recent reports, taken in the context of the other evidence of record. Specifically, he has discussed in detail each of the criticisms that the [e]mployer's physician's made of his reports and of the epidemiological studies and he has supported his findings

[11] The administrative law judge noted that the medical studies cited by the physicians had been discussed by the Department of Labor in the preamble to the 2001 amendments to the regulations, 65 Fed. Reg. 79937-79945 (Dec. 20, 2000). *See* Decision and Order at 12.

> with citations to studies and to particular findings relating to the [m]iner. In his March 29, 2004 report, he discussed the deficiencies of the analysis set for by Drs. Repsher, Renn, and Tuteur at their depositions, and in his October 27, 2003 report, he discussed the report of Dr. Repsher and the supplemental reports of Dr. Renn and Tuteur, as well as medical records from Dr. Tse (including two hospital discharge summaries), the autopsy report of Dr. Murphy, the death certificate, and Dr. Dahhan's supplemental report; he also commented upon CT scans and an article relied upon by Dr. Tuteur. Dr. Cohen's reports are well reasoned and well documented.

Decision and Order at 13.

We hold that the administrative law judge permissibly rejected the opinions of Drs. Renn, Tuteur, Repsher, and Dahhan based upon Dr. Cohen's persuasive discussion of the epidemiological evidence, and properly relied on Dr. Cohen's opinion to find that claimant established the existence of legal pneumoconiosis.[12] Decision and Order at 16. Moreover, we hold that the administrative law judge had discretion to adopt Judge Burke's causation analysis and further credit Dr. Cohen's opinion that "the [m]iner's coal dust exposure, as well as his smoking history, was 'significantly contributory' to his severe obstructive lung disease, impairment in diffusion, hypoxemia, and oxygen desaturation on exercise, and also was significantly contributory to his restrictive ventilatory defect." Decision and Order at 16; Claimant's Exhibit 2.

Additionally, we reject employer's assertion that the administrative law impermissibly adopted Dr. Cohen's opinion as her own when she stated: "[r]ather than try[ing] to paraphrase Dr. Cohen's seven-page supplemental report of October 27, 2003 (CX 1) and his seven-page supplemental report of March 29, 2004 (CX 2), I incorporate those reports by reference herein, and I adopt Dr. Cohen's reasoning." Decision and Order at 13; Employer's Brief at 18. The administrative law judge discussed how Dr. Cohen addressed the criticisms of his opinion in his reports dated March 29, 2004 and

[12] Contrary to employer's contention, the administrative law judge did not misstate Dr. Repsher's opinion. Employer's Brief at 24; Employer's Exhibit 11. The administrative law judge fully described Dr. Repsher's testimony on the issue of legal pneumoconiosis. She noted that it was Dr. Repsher's opinion that the miner had chronic obstructive pulmonary disease (COPD) that was probably due to coal dust exposure but "[n]ot in any measurable way…." Decision and Order at 12. The administrative law judge did not consider this opinion to be supportive of a finding of legal pneumoconiosis, and specifically found Dr. Repsher's opinion on the existence of legal pneumoconiosis to be outweighed by Dr. Cohen's better reasoned opinion that coal dust significantly contributed to the miner's COPD. Decision and Order at 13.

October 27, 2003. She permissibly found Dr. Cohen's opinion as to the etiology of claimant's respiratory impairment to be reasoned, documented and better supported by the objective evidence. *See Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988), aff'd, 865 F.2d 916 (7th Cir. 1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). The administrative law judge also properly noted that Dr. Cohen's interpretation of the epidemiological studies was more consistent with the interpretation of those studies advanced by the Department of Labor. Decision and Order at 12. It is only with regard to the content of the medical literature that the administrative law judge deferred to Dr. Cohen's explanation of the meanings of the studies.[13] Decision and Order at 13. The administrative law judge satisfied her obligation to weigh the conflicting evidence and explain the basis and reasons for all of her findings of fact. *See* Administrative Procedure Act, (APA) 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and U.S.C. §932(a); *Lafferty v. Cannelton Industries*, Inc., 12 BLR 1-190 (1989). We are not empowered to reweigh the evidence nor substitute our inferences for those of the administrative law judge. *See Peabody Coal Co. v. Benefits Review Board* [*Wells*], 560 F.2d 797, 1 BLR 2-133 (7th Cir. 1977); *Fagg*, 12 BLR at 1-77; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

Consequently, we reject employer's assertion that the administrative law judge abused her discretion in crediting Dr. Cohen's opinion over employer's experts and in adopting the earlier credibility determinations of Judge Burke with respect to Dr. Cohen. In *Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 895, 22 BLR 2-409, 2-426 (7th Cir. 2002), the Seventh Circuit stated that it has recognized that it is "rational to give great weight to Dr. Cohen's views, particularly in light of his remarkable clinical experience and superior knowledge of cutting-edge research."

The administrative law judge had discretion to review all of the record evidence and come to the same conclusion as Judge Burke that the miner was totally disabled due to pneumoconiosis, and thus, entitled to benefits. The administrative law judge weighed all of the evidence of record and properly found, within her discretion, that there was no mistake in a determination of fact regarding an award of benefits in this case. We

[13] The administrative law judge chose not to paraphrase Dr. Cohen's report but made it clear that she was not substituting her opinion for that of the medical experts in the case. Decision and Order at 13, n. 22. She noted, "I have not reviewed the studies myself and can only assess them based upon the discussions provided by the experts. Medicine and epidemiology are two different disciplines, although a competent clinician may take epidemiologic evidence into account in making his diagnosis, as Dr. Cohen states." *Id*.

therefore affirm her findings pursuant to 20 C.F.R. §§725.310 (2000), 718.202(a), 718.204(b), (c).[14]

Attorney Fee Award

We now turn to employer's appeal of the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees. Employer argues that the administrative law judge erred in awarding fees for two attorneys to litigate this case. Employer further objects to the administrative law judge's decision to award Ms. Fogel an hourly rate of $200.00.

The award of an attorney fee is discretionary and will be upheld on appeal unless shown by the challenging party to be arbitrary, capricious, or an abuse of discretion. *Jones v. Badger Coal Co.*, 21 BLR 1-102, 1-108 (1998) (*en banc*). We reject the contention that the administrative law judge abused her discretion in awarding attorney fees in this case.

Contrary to employer's assertion, the administrative law judge specifically addressed employer's challenge to Ms. Fogel's requested hourly rate of $200.00, noting that a higher fee was justified since the case was not a "routine black lung case." Supplemental Decision and Order Awarding Attorney Fees at 2. The administrative law judge further acknowledged that the case was "one of the most complex that I have encountered in my ten years with the Department of Labor, involving multiple awards and appeals…." *Id.* The administrative law judge properly found that Ms. Fogel's hourly rate claimed was fair and reasonable based on the issues involved, the complexity of the case, and the degree of skill in which she represented her client, and further that "the amount that [e]mployer pays its own attorney [was] irrelevant." Supplemental Decision and Order Awarding Attorney Fees at 2; *see Kerns v. Consolidation Coal Co.*, 247 F.3d 133, 22 BLR 2-283 (4th Cir. 2001). We therefore affirm the administrative law judge's decision to award attorney fees at the requested hourly amount of $200.00.

[14] Employer reiterates arguments it raised in prior appeals to the Board, notably the Dr. Cohen's opinion was neither reasoned nor documented, that Dr. Cohen's opinion could not be credited based on his qualifications, and that Dr. Cohen's diagnosis of legal pneumoconiosis was not corroborated by the opinions of Drs. Sandoval and Nelson, who only diagnosed clinical pneumoconiosis. Because we previously upheld Judge Burke's credibility determinations, we decline to revisit employer's contentions in this appeal on those issues. *See generally Brinkley v. Peabody Coal Co.*, 14 BLR 1-147 (1990); *Williams v. Healy-Ball-Greenfield*, 22 BRBS 234 (1989); Employer's Brief at 22-24.

Furthermore, we agree with claimant's counsel that employer's assertion that the administrative law judge allowed two attorneys to be paid for litigating this case is misleading. Claimant's Brief at 14. Claimant's counsel explained to the administrative law judge that services of Mr. Wissore, a partner at her law firm, were obtained because she had a scheduling conflict, and she asked Mr. Wissore to substitute for her during a deposition scheduled by employer's counsel. The administrative law judge specifically noted that Ms. Fogel cogently explained why Mr. Wissore's services were required, and that his requested fee of $200.00 per hour did not appear excessive or unreasonable, or duplicative of services performed by Ms. Fogel. Supplemental Decision and Order Awarding Attorney Fees at 2. Thus, we affirm as supported by substantial evidence, the administrative law judge's decision to include Mr. Wissore's services at the hourly rate of $200.00 in the total award for attorney fees in this case.

Accordingly, the Decision and Order Granting Benefits and the Supplemental Decision and Order Awarding Attorney Fees of the administrative law judge are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge