BRB Nos. 11-0836 BLA
and 12-0302 BLA

PATRICIA FLETCHER (Widow of DONALD FLETCHER)	)	
Claimant-Respondent	)	
v.	)	
HARMAN MINING COMPANY	)	DATE ISSUED: 10/12/2012
and	)	
OLD REPUBLIC INSURANCE COMPANY	)	
Employer/Carrier- Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Second Remand Granting Benefits and the Supplemental Order Awarding Supplemental Fees of Pamela Jane Lakes, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

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

Before: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order on Second Remand Granting Benefits and the Supplemental Order Awarding Supplemental Fees (2006-BLA-05812) of Administrative Law Judge Pamela Jane Lakes rendered in connection with a survivor's claim filed on June 6, 2005, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). The relevant procedural history of this case is as follows. The administrative law judge issued a Decision and Order on Remand Granting Benefits and Awarding Fees on December 3, 2010 and employer appealed to the Board, which docketed the case under BRB No. 11-0222 BLA.[1] While employer's appeal was pending, the administrative law judge issued a Supplemental Order Awarding Supplemental Fees dated July 29, 2011. Employer appealed the Supplemental Order and the Board docketed the case under BRB No. 11-0836 BLA.

Subsequently, the Board issued its Decision and Order in BRB No. 11-0222 BLA. The Board vacated the administrative law judge's finding that Dr. Perper's medical opinion was sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *P.F.* [*Fletcher*] *v. Harman Mining Co.*, BRB No. 11-0222 BLA, slip op. at 6 (Nov. 29, 2011) (unpub.). The Board also vacated the administrative law judge's finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), as the administrative law judge did not set forth her rationale in compliance with the 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 30 U.S.C. §932(a). *Id*. at 7-8. The Board did not address employer's

[1] In the administrative law judge's initial Decision and Order, issued on December 18, 2008, she credited the miner with eighteen years of coal mine employment and found that claimant established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (2), and (4). The administrative law judge also found that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and that the miner's death was due to clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits. Pursuant to employer's appeal, the Board affirmed the administrative law judge's finding that claimant established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *P.F.* [*Fletcher*] *v. Harman Mining Co.*, BRB No. 09-0304 BLA, slip op. at 4-5 (Oct. 26, 2009) (unpub.). However, the Board vacated the administrative law judge's findings that the claimant established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), and death due to pneumoconiosis at 20 C.F.R. §718.205(c). *Id*. at 10, 11-12. The case was remanded to the administrative law judge for reconsideration. *Id*. at 12.

challenge to the attorney fee award rendered in the Decision and Order Granting Benefits and Awarding Fees, because the issues were premature in light of the Board's determination to vacate the award of benefits. *Id*. at 9.

In the administrative law judge's Decision and Order on Second Remand Granting Benefits, issued on March 2, 2012, the administrative law judge reconsidered Dr. Perper's opinion and again found that it was sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge further found that Dr. Perper's opinion was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.[2] The administrative law judge again approved an attorney's fee of $9,350.00 for legal services performed from March 24, 2006 to December 27, 2008.

On March 13, 2012, the Board received employer's notice of appeal with regard to the administrative law judge's Decision and Order on Second Remand. This appeal was docketed under BRB No. 12-0302 BLA and consolidated with employer's appeal in BRB No. 11-0836 BLA for the purpose of decision only.

In employer's appeal of the administrative law judge's Decision and Order on Second Remand, it contends that the administrative law judge erred in finding that the miner suffered from legal pneumoconiosis and that clinical and legal pneumoconiosis hastened his death. In addition, employer contends that the administrative law judge deprived employer of a fair hearing, in violation of the APA, by prejudging the issues in this case and, therefore, was obligated to recuse herself. Employer further asserts that the administrative law judge was biased and requests that the Board remand this case with instructions that it be assigned to a different administrative law judge. With respect to the administrative law judge's disposition of the attorney fee petitions in the Supplemental Order and the Decision and Order on Second Remand, employer contends that the amount of the fees awarded is excessive.

Claimant responds in support of the administrative law judge's award of benefits and urges the Board to reject employer's assertion of bias and its request that this case be remanded and transferred to a new administrative law judge. Claimant also urges affirmance of the administrative law judge's attorney's fee awards in BRB Nos. 12-0302 BLA and 11-0836 BLA. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

[2] The administrative law judge did not consider whether claimant is entitled to the benefit of the rebuttable presumption contained in amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556(a), 124 Stat. 119 (2010).

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. Request for Reassignment

As an initial matter, employer requests that the award of benefits be vacated and the case reassigned to another administrative law judge, due to the administrative law judge's prejudgment of the relevant issues. Employer bases its contention upon the administrative law judge's statements asserting that the Board's remand was based upon mischaracterizations of her findings and the application of an incorrect standard of review. *See* Decision and Order on Second Remand at 2-3, 5, 8, 14. Employer maintains that the administrative law judge's comments establish that she was not an impartial adjudicator and, therefore, that she deprived employer of its right to due process. We deny employer's request.

The Board has held that a party alleging bias or prejudice on the part of the administrative law judge has a heavy burden to satisfy. *Cochran v. Consolidation Coal Co.*, 16 BLR 1-101, 1-107-08 (1992). However, as the Board stated in *Hall v. Director, OWCP*, 12 BLR 1-80 (1988), "the United States judicial system relies on the most basic of principles, that a lower forum must not deviate from the orders of a superior forum, regardless of the lower forum's view of the instructions given it." *Hall*, 12 BLR at 1-82. Notwithstanding the administrative law judge's comments regarding the Board's decision to remand the case, the record does not reflect that the administrative law judge deviated from the Board's instructions or exhibited bias against employer. *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 620, 23 BLR 2-345, 2-358 (4th Cir. 2006), *citing Liteky v. U.S.*, 510 U.S. 540, 555 (1994) (expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women sometimes display, do not establish bias or partiality). We thus reject employer's request that the award of benefits be vacated and the case remanded to another administrative law judge. *Marcus v. Director, OWCP*, 548 F.2d 1044, 1050 (D.C. Cir. 1976); *Zamora v. C.F. & I. Steel Corp.*, 7 BLR 1-568 (1984); *see also* 20 C.F.R. §725.352.

[3] The record reflects that the miner's coal mine employment was in Virginia. Director's Exhibits 3, 4. Accordingly, 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 (1989) (en banc).

II. The Merits of Entitlement

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718, in a survivor's claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). The miner's death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, if death was caused by complications of pneumoconiosis or if the presumption relating to complicated pneumoconiosis, set forth in 20 C.F.R. §718.304, is applicable. *See* 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. *See* 20 C.F.R. §718.205(c)(5); *Bill Branch Coal Co. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 979-80, 16 BLR 2-90, 2-92-93 (4th Cir. 1992).

A. The Existence of Legal Pneumoconiosis

Employer contends that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis[4] pursuant to 20 C.F.R. §718.202(a)(4). Specifically, employer asserts that the administrative law judge did not reconsider the opinion of Dr. Perper and did not provide an adequate explanation for crediting Dr. Perper's opinion. After consideration of the administrative law judge's Decision and Order on Second Remand, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge's Decision and Order on Second Remand is supported by substantial evidence, is consistent with applicable law, and contains no reversible error.

Pursuant to employer's previous appeal, the Board agreed with employer that the administrative law judge did not adequately address whether Dr. Perper's opinion, that the miner's emphysema/chronic obstructive pulmonary disease (COPD) was due to both coal mine dust exposure and cigarette smoking, was adequately reasoned. *Fletcher*, BRB No. 11-0222 BLA, slip op. at 6. The Board, therefore, instructed the administrative law judge to reconsider Dr. Perper's opinion. *Id*. On remand, the administrative law judge acknowledged that she was instructed to address Dr. Perper's explanation for his conclusion, the documentation underlying his medical judgment, and the sophistication of, and bases for, his diagnosis. Decision and Order on Second Remand at 6-9. The

[4] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2).

administrative law judge reviewed the summary of Dr. Perper's opinion set forth in her initial Decision and Order and stated:

> . . . Dr. Perper found that the Miner suffered from legal pneumoconiosis in the form of centrilobular emphysema, which resulted from the combined effects of mixed coal mine dust exposure and smoking/tobacco exposure. To the extent that I did not make myself clear, Dr. Perper's analysis on the legal pneumoconiosis issue was based upon a reasoned discussion of the epidemiological evidence (summarized and discussed at pages 17 to 31 of his opinion) as applied to the specific circumstances of the Miner's case (as summarized on pages 2 through 13 and discussed as (sic) pages 16 to 17 of his opinion).

Id. at 9. Accordingly, the administrative law judge determined that Dr. Perper's opinion was more persuasive than Dr. Tuteur's opinion, as it was reasoned and documented, while Dr. Tuteur's opinion was not. *Id*.

Contrary to employer's contention, the administrative law judge appropriately incorporated her findings from her initial 2008 Decision and Order, and her 2010 Decision and Order on Remand, and adequately explained the rationale for her findings. The administrative law judge reasonably concluded that, "[t]aking into account Dr. Perper's explanation for his conclusion and the documentation upon which he relied, I find his opinion is reasoned and documented and outweighs the other evidence on the legal pneumoconiosis issue." [5] Decision and Order on Second Remand at 10; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533-34**,** 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441-42**,** 21 BLR 2-269, 2-275-76 (4th Cir. 1997). Therefore, we affirm the administrative law judge's finding that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

[5] In her prior decision, the administrative law judge found that Dr. Tuteur's opinion, that the miner's emphysema/chronic obstructive pulmonary disease (COPD) was not due to coal mine dust exposure, was entitled to less weight, because Dr. Tuteur relied upon an inflated smoking history, and because Dr. Tuteur's opinion was contrary to the regulations. Decision and Order on Remand at 4-5. The Board affirmed the administrative law judge's reliance on the latter rationale to discredit Dr. Tuteur's opinion at 20 C.F.R. §718.202(a)(4). *P.F.* [*Fletcher*] *v. Harman Mining Co.*, BRB No. 11-0222 BLA, slip op. at 5-6 (Nov. 29, 2011) (unpub.).

B. Death Due to Pneumoconiosis

Employer next argues that the administrative law judge erred in finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).[6] On remand, the administrative law judge acknowledged the Board's holding, vacating her determination that Dr. Perper's opinion that both clinical and legal pneumoconiosis hastened the miner's death from fungal pneumonia, was sufficient to satisfy claimant's burden under 20 C.F.R. §718.205(c). Decision and Order on Second Remand at 10. The administrative law judge reconsidered the relevant evidence and acted within her discretion in finding "Dr. Perper's well reasoned, well documented opinion outweighs the opinions of the other physicians expressing opinions on the death causation issue." *Id*. at 17; *see Hicks*, 138 F.3d at 533-34**,** 21 BLR at 2-335; *Akers*, 131 F.3d at 441-42**,** 21 BLR at 2-275-76. Further, contrary to employer's contention, the administrative law judge permissibly accorded less weight to the opinions of Drs. Crouch and Tuteur, finding them to be inconsistent with her findings that claimant established the existence of clinical and legal pneumoconiosis at 20 C.F.R. §718.202(a). *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); Decision and Order on Second Remand at 14. As substantial evidence supports the administrative law judge's credibility determinations, we affirm the administrative law judge's finding that claimant established death due to pneumoconiosis under 20 C.F.R. §718.205(c). *See Hicks*, 138 F.3d at 533-34**,** 21 BLR at 2-335; *Akers*, 131 F.3d at 441-42**,** 21 BLR at 2-275-76; *Shuff*, 967 F.2d at 979-80, 16 BLR at 2-92-93.

Because we have affirmed the administrative law judge's findings that claimant established that the miner had legal pneumoconiosis and that his death was due to pneumoconiosis, we affirm the award of benefits. *See Trumbo*, 17 BLR at 1-87-88.

[6] The death certificate lists the cause of the miner's death as cryptococcal pneumonia caused by COPD and "black lung." Director's Exhibit 9. Dr. Adelson, the autopsy prosector, opined that the miner died due to "respiratory insufficiency secondary to severe cryptococcal pneumonia." Director's Exhibit 10. Agreeing, Dr. Perper opined that "exposure to mixed coal dust and simple coal workers' pneumoconiosis were [sic] a significant contributor both directly and through reduction of immune process favoring the fungal fatal infection." Claimant's Exhibit 7. Drs. Crouch and Tuteur disagreed. Dr. Crouch opined that "occupational dust exposure could not have caused, contributed to or otherwise hastened [the miner's] death." Employer's Exhibit 1. Dr. Tuteur opined that neither coal workers' pneumoconiosis, nor any other coal mine dust-related disease process, played any role in the miner's death. Employer's Exhibit 4.

III. The Attorney Fee Awards

On January 22, 2009, claimant's counsel submitted his first fee petition, requesting a total fee of $9,450.00, representing 48.5 hours of services performed between March 24, 2006 and December 27, 2008, while this case was before the Office of Administrative Law Judges (OALJ). The 48.5 hours were comprised of 18.0 hours of services performed by Attorney Joseph E. Wolfe at an hourly rate of $300; 2.5 hours of services performed by Attorney W. Andrew Delph at an hourly rate of $200; 10.0 hours of services performed by Attorney Ryan C. Gilligan at an hourly rate of $175; and 18.0 hours of services performed by legal assistants at an hourly rate of $100. Employer challenged the hourly rates requested and the number of hours claimed. On December 21, 2010, when the case was pending before the Board on employer's second appeal, claimant's counsel submitted a second fee petition to the administrative law judge, requesting a total fee of $2,168.75, representing 10.5 hours of services performed while this case was before the OALJ between October 28, 2009 and December 6, 2010. The 10.5 hours were comprised of 3.25 hours of services performed by Attorney Wolfe at an hourly rate of $300; 6.25 hours of services performed by Attorney Gilligan at an hourly rate of $175; and 1.0 hour of services performed by legal assistants at an hourly rate of $100. Employer again challenged the hourly rates requested and the number of hours claimed.

In her December 23, 2010 Decision and Order on Remand Granting Benefits and Awarding Fees, the administrative law judge considered the initial fee petition and employer's objections thereto, and awarded the hourly rates requested, but disallowed one hour of requested time for work performed by legal assistants that she found was clerical in nature. The administrative law judge awarded claimant's counsel fees totaling $9,350.00 for the work performed before the OALJ from March 24, 2006 to December 27, 2008. In her July 29, 2011 Supplemental Order Awarding Supplemental Fees, the administrative law judge considered the second fee petition and employer's objections thereto, approved the hourly rates and number of hours requested and awarded claimant's counsel fees totaling $2,168.75 for work performed before the OALJ from October 28, 2009 and December 6, 2010. In her March 2, 2012 Decision and Order on Second Remand Granting Benefits, the administrative law judge reapproved the award of fees totaling $9,350.00 in her 2010 Decision and Order on Remand Granting Benefits.

On appeal, employer contends, with respect to both of the fee awards, that the administrative law judge erred in finding that the hourly rates requested were reasonable and argues that claimant's counsel failed to produce specific evidence of the prevailing market rates. Employer alleges that the administrative law judge did not rely on market proof, when approving the requested hourly rates, and thus failed to comply with applicable legal authority on fee-shifting. Employer maintains that the administrative law judge erred in relying on past fee awards to establish the prevailing market rates.

Employer also contends that the administrative law judge improperly rejected its proffered market evidence. Employer further argues that the administrative law judge did not properly consider whether the amount of time that claimant's counsel billed for specific services was appropriate.

Claimant's counsel responds to employer's contentions in BRB No. 12-0302 BLA, urging affirmance of the administrative law judge's award, but neither claimant's counsel, nor the Director, has filed a brief in response to employer's appeal of the administrative law judge's supplemental award of attorney's fees in BRB No. 11-0836 BLA.

After consideration of employer's contentions on appeal, we hold that the administrative law judge performed the requisite analysis set forth in 20 C.F.R. §725.366(b), considered employer's objections and the evidence provided by both parties as to the prevailing market rate for black lung attorneys, and adequately explained her determination that the hourly rates of $300.00, $200.00 and $175.00 for work performed by Attorneys Wolfe, Delph and Gilligan, respectively, as well as the hourly rate of $100.00 for the legal assistants, were reasonable under the facts of this case. The administrative law judge correctly considered the nature of the issues involved in this case; the qualifications of the attorneys; the nature of the services rendered; evidence of fees counsel received in the past, based on a list of cases in which the requested rates were awarded as reasonable; and the ultimate benefit to claimant. *See B&G Mining, Inc. v. Director, OWCP* [*Bentley*], 522 F.3d 657, 663, 24 BLR 2-106, 2-121 (6th Cir. 2008). The administrative law judge permissibly concluded that this evidence, considered in conjunction with the other factors, including evidence of fees counsel received in the past, was appropriately included within the range of sources from which to ascertain a reasonable rate. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 289, 24 BLR 2-269, 2-291 (4th Cir. 2010); *Maggard v. Int'l Coal Group,* 24 BLR 1-172, 1-174-75 (2010) (Order); *Maggard v. Int'l Coal Group,* 24 BLR1-203, 1-205 (2010) (Order); *Bowman v. Bowman Coal Co.*, 24 BLR 1-165, 1-170 n.8 (2010) (Order); *Parks v. Eastern Assoc. Coal Corp.*, 24 BLR 1-177, 1-181 n.5 (2010).

Because the administrative law judge rationally found that claimant's counsel provided sufficient evidence to support the requested hourly rates, we affirm her approval of the hourly rates of $300.00 for Attorney Wolfe, $200.00 for Attorney Delph, $175.00 for Attorney Gilligan and $100.00 for full-time legal assistants.

Regarding the administrative law judge's calculation of the allowable hours, once a service has been found to be compensable, the adjudicating officer must decide whether the amount of time expended by the attorney in performance of the service is excessive or unreasonable. *See Lanning v. Director, OWCP*, 7 BLR 1-314 (1984). In BRB No. 12-0302 BLA, employer contends that the itemized time entries for work by legal assistants,

which involved scheduling client appointments on February 21, 2007 and December 4, 2007, and forwarding documents on September 27, 2006, May 11, 2007 and July 29, 2007, are clerical in nature, and should, therefore, have been disallowed. Employer's Brief at 32. The Board has held that clerical services are considered part of overhead expenses and are figured into the hourly rate. *See Whitaker v. Director, OWCP*, 9 BLR 1-216 (1986). The administrative law judge reviewed the challenged entries, agreed with employer that claimant's counsel was not entitled to the time that his legal assistants spent on activities such as scheduling because these activities are clerical in nature, and, therefore, not compensable, but rejected employer's challenges to the above entries, stating that:

> [C]lient contact that goes beyond a ministerial scheduling function is an appropriate matter for professional involvement, as is telephone contact with opposing counsel. Likewise, calendaring, case organization, drafting correspondence, and responding to discovery are vital functions that may require direct attorney or legal assistant involvement.

2010 Decision and Order on Remand at 10. We affirm the administrative law judge's allowance of these entries, as reasonable and within her discretion. *See Abbott v. Director, OWCP*, 13 BLR 1-15, 1-16 (1989); *Lanning*, 7 BLR at 1-316.

In BRB No. 11-0836 BLA, employer contends that the itemized time entries for work by legal assistants on March 1, 2010 and April 22, 2010 are clerical in nature and, therefore, should have been disallowed. Employer's Brief at 10. The March 1, 2010 time entry requested payment for one-quarter of an hour in which a legal assistant received a telephone call from claimant to schedule an office appointment and the April 22, 2010 time entry requested payment for one-quarter of an hour in which a legal assistant analyzed the file for follow-up and noted the date upon which the administrative law judge required position statements to be filed. In this case, the administrative law judge agreed with employer that claimant's counsel was not entitled to the time that his legal assistants spent on clerical activities; however, in regard to the above-challenged entries, the administrative law judge found that, because this work involved "client contact or file analysis," the work represented appropriate matters for professional involvement. *See* 2010 Decision and Order on Remand at 9. We affirm the administrative law judge's allowance of these entries, as reasonable and within her discretion. *See Abbott*, 13 BLR at 1-16; *Lanning*, 7 BLR at 1-316.

Employer further asserts that the administrative law judge ignored its contention that, if fees for the aforementioned services were awarded, then payment for time entries relating to docketing tasks by a legal assistant on April 22, 2010 and Attorney Wolfe on February 26, 2010, should have been disallowed as duplicative. Employer's Brief at 10. The April 22, 2010 time entry requested payment for one-quarter of an hour in which a

legal assistant analyzed the file and entered the position statement's due date onto the master calendar. The February 26, 2010 time entry requested one-quarter of an hour for Attorney Wolfe to analyze the administrative law judge's notice of assignment on remand and an order requiring briefs on remand to be filed within thirty days. Because this work represented appropriate matters for professional involvement and entailed dissimilar tasks, we reject employer's contention that these services were duplicative and affirm the administrative law judge's allowance of these entries as reasonable and within her discretion. *See Abbott*, 13 BLR at 1-16; *Lanning*, 7 BLR at 1-316.

Employer also asserts that the administrative law judge failed to explain why she rejected employer's contention that several time entries by Attorney Wolfe and Attorney Gilligan were not duplicative. Employer's Brief at 10. Employer compared Attorney Wolfe's itemized time entries on May 1, 2010[7] and December 6, 2010[8] with Attorney Gilligan's itemized time entry on December 6, 2010,[9] and also compared Attorney Wolfe's itemized time entries on October 28, 2009[10] and March 29, 2010[11] with Attorney

[7] Attorney Wolfe's May 1, 2010 itemized time entry requested payment for one-quarter of an hour in which he analyzed a letter to the administrative law judge from the Solictor's office, dated April 29, 2010, suggesting that the claim be adjudicated under the Act, as amended, and stating that is unnecessary to remand the case to the district director.

[8] Attorney Wolfe's December 6, 2010 itemized time entry requested payment for one-half of an hour he spent analyzing the administrative law judge's December 3, 2010 Decision and Order on Remand awarding benefits.

[9] Attorney Gilligan's December 6, 2010 itemized time entry requested payment for one-half of an hour he spent reading and summarizing the administrative law judge's Decision and Order on Remand for the file.

[10] Attorney Wolfe's October 28, 2009 itemized time entry requested payment for one-half of an hour he spent analyzing the Board's October 26, 2009 Decision and Order affirming in part and vacating in part the administrative law judge's Decision and Order and remanding the case for further consideration.

[11] Attorney Wolfe's March 29, 2010 itemized time entry requested payment for one-quarter of an hour he spent analyzing employer's counsel's letter to the administrative law judge, dated March 16, 2010, and employer's brief.

Gilligan's itemized time entry on May 3, 2010.[12] Employer also contends that the administrative law judge erred in failing to disallow Attorney Wolfe's itemized time entry for one-quarter hour on December 5, 2010[13] as "unnecessary." *Id.* The administrative law judge acknowledged that employer argued that the aforementioned requested fees were "excessive and duplicative," but stated that "[a]fter reviewing the challenged entries, I do not agree," and therefore rejected employer's challenges. Supplemental Order Awarding Supplemental Fees at 2. Upon review of the challenged itemized time entries and the administrative law judge's conclusion, we affirm the administrative law judge's allowance of these itemized time entries, since she did not abuse her discretion in allowing these entries. *See Abbott*, 13 BLR at 1-16.

Furthermore, we reject employer's contention that the administrative law judge erred in approving claimant's counsel's use of quarter-hour billing. Contrary to employer's contention, quarter-hour billing is permissible, as long as the total amount of time is reasonable. *Bentley*, 552 F.3d at 666-67, 24 BLR at 2-127. Herein, the administrative law judge addressed employer's objections to counsel's billing in quarter-hour increments, as well as the number of hours billed, and reduced the requested time by an appropriate amount for clerical services provided by the legal assistants As the administrative law judge acted within her discretion in finding the total number of hours claimed to be reasonable in light of the legal services performed, we affirm her determination to approve counsel's use of the quarter-hour billing method. *See Bentley*, 552 F.3d at 666-67, 24 BLR at 2-127; *Abbott*, 13 BLR at 1-17; 2010 Decision and Order on Remand at 10.

Because we have rejected all of the allegations of error raised by employer, we affirm the administrative law judge's awards of attorneys' fees in the amounts of $9,350.00 in BRB No. 12-0302 BLA and $2,168.75 in BRB No. 11-0836 BLA.[14] *See generally Broyles v. Director, OWCP*, 824 F.2d 327, 10 BLR 2-194 (4th Cir. 1987), *aff'd sub nom. Pittston Coal Group v. Sebben*, 488 U.S. 105, 12 BLR 2-89 (1988).

---

[12] Attorney Gilligan's May 3, 2010 itemized time entry requested payment for 5.50 hours he spent analyzing and reviewing the file, and writing a position statement/brief in support of an award of benefits.

[13] Attorney Wolfe's December 5, 2010 itemized time entry requested payment for one-half of an hour spent assessing the status of the file and searching the Office of Administrative Law Judges website for the administrative law judge's decision.

[14] 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 administrative law judge's Decision and Order on Second Remand Granting Benefits and her Supplemental Order Awarding Supplemental Fees are affirmed.

SO ORDERED.

_____
ROY P. SMITH
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge