

BERNARD BOROSKI	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DYNCORP INTERNATIONAL	)	
	)	DATE ISSUED: <u>June 11, 2014</u>
and	)	
	)	
INSURANCE COMPANY OF THE	)	
STATE OF PENNSYLVANIA	)	
	)	
Employer/Carrier-	)	ORDER on MOTION for
Respondents	)	RECONSIDERATION EN BANC

Claimant has filed a motion for reconsideration of the Board’s decision in this case, with the suggestion of reconsideration en banc. *Boroski v. DynCorp Int’l*, BRB No. 13-0372 (Mar. 20, 2014). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer has responded, asserting the motion was untimely filed and, alternatively, urging the Board to deny the motion for reconsideration. Claimant filed a reply brief. We deny claimant’s motion for reconsideration en banc.

Initially, we reject employer’s assertion that claimant’s motion for reconsideration was untimely filed. The Board’s decision was issued on March 20, 2014. The thirtieth day thereafter was Saturday, April 19, 2014. Section 802.221(a) of the regulations provides that if the last day for filing a paper is a Saturday, Sunday, or legal holiday, the period runs until the next business day. 20 C.F.R. §802.221(a). Thus, the period for filing was extended until Monday, April 21. The service sheet certifies that counsel mailed the motion on April 21, 2014, and Section 802.221(b) provides that, if the date of mailing is timely, then Section 802.221(a) is deemed complied with. 20 C.F.R. §802.221(b). Claimant’s motion was timely filed.

Relevant to the motion for reconsideration, claimant’s counsel requested a supplemental attorney’s fee for work performed before the administrative law judge in securing an additional attorney’s fee on remand. The administrative law judge awarded counsel the 15 hours requested but reduced the rate from the requested \$400 per hour to \$350 per hour – awarding the same rate he had used to award a fee for work on the merits

of the case.<sup>1</sup> Claimant appealed the supplemental fee award to the Board, asserting error in the administrative law judge's failure to award counsel an hourly rate of \$400. The Board affirmed the supplemental fee award, stating that claimant had not shown an abuse of the administrative law judge's discretion in awarding counsel a fee based on a rate of \$350 per hour.

In his motion for reconsideration, claimant asserts that the Board erred in affirming the hourly rate awarded, as the administrative law judge did not determine a "market rate" for counsel's services and as the administrative law judge's rejection of counsel's hourly rate evidence was "based on rank speculation." We reject claimant's arguments, as they were raised in his appeal, fully considered by the Board, and rejected in the Board's decision. Claimant has not established error in the Board's conclusion that claimant did not demonstrate an abuse of the administrative law judge's discretion in this case. Therefore, we deny claimant's motion for reconsideration.

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<sup>1</sup> The administrative law judge awarded a supplemental fee of \$5,250; counsel had requested \$6,000.

Accordingly, the motion for reconsideration is denied, and the Board's decision in this case is affirmed. 20 C.F.R. §§801.301(b), 802.409.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge