



In the Matter of:

DUNCAN F. SHIELDS,

ARB CASE NO. 08-072

COMPLAINANT,

ALJ CASE NO. 2007-STA-022

v.

DATE: November 30, 2009

JAMES E. OWEN TRUCKING, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul O. Taylor, Esq., *Truckers Justice Center*, Burnsville, Minnesota

For the Respondent:

Donald M. Rowe, Esq., *Rowe & Sitzler, P.C.*, Bedford, Virginia

FINAL DECISION AND ORDER ON ATTORNEY FEES

We have issued a final decision and order affirming the Administrative Law Judge's (ALJ's) Recommended Decision and Order (R. D. & O.) in this case.¹ We concurred with the ALJ that James E. Owen Trucking, Inc. (Owen Trucking), violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified,² and its implementing regulations, 29 C.F.R. Part 1978 (2007) when it terminated the

¹ *Shields v. James E. Owen Trucking, Inc.*, ARB No. 08-021, ALJ 2007-STA-022 (Nov. 30, 2009).

² 49 U.S.C.A. § 31105 (Thomson/West 2007).

employment of the Complainant, Duncan F. Shields. We concurred with the ALJ's award of back pay and compensatory damages, but modified the back pay award. We also upheld the ALJ's orders regarding reinstatement and abatement measures.

Shields's attorney, Paul Taylor, filed a fee petition before the ALJ, and Owen Trucking filed an opposition. Taylor requested \$60,630.61 in attorneys' fees, paralegal fees, and costs. This amount represented 42.75 hours of work performed by Taylor at an hourly rate of \$275.00 for work he performed prior to June 1, 2007, 121.65 hours of work performed by Taylor at an hourly rate of \$325.00 for work he performed beginning on June 1, 2007, 17 hours for travel time at a rate of \$162.50 per hour, \$6,031.76 in costs, and \$543.75 in paralegal fees. In his Supplemental Recommended Decision and Order (S. R. D. & O.), the ALJ discussed Owen Trucking's objections to Shields's fee petition and awarded a total of \$60,630.61 in attorneys' fees and costs for work performed before the ALJ.³ He allowed all of the hours requested.⁴ We find that the ALJ's fee award is reasonable.

Owen Trucking filed a brief in opposition to the ALJ's order and Shields filed a brief in support of the order.

Owen Trucking argues before the Board that the ALJ erred in four ways. First, it argues that the ALJ erred in finding that Taylor's billing rate of \$325.00 per hour was reasonable when compared to rates charged by other attorneys in Southwestern Virginia because the relevant community was specifically Roanoke, Virginia. Owen Trucking argued that Taylor had the burden of overcoming the presumption that the relevant community for the purposes of determining an hourly rate was Roanoke, Virginia, and that he did not do so. Owen Trucking also argues that Taylor did not show that the case was complex or specialized or concerned any politically sensitive issues. Owen Trucking cited *Powell Valley Bankshares, Inc.*, 2002 U.S. Dist. LEXIS 6314, at *9 and *Freeman v. Potter*, Case No. 7:04cv00276, 2006 U.S. Dist. LEXIS 65329 (W.D. Va. Sept. 13, 2006), for its position that it would have been appropriate for the ALJ to have approved an hourly rate for Taylor of no more than \$200.00.

Owen Trucking also argues that the ALJ erred in finding that Taylor did not spend an excessive amount of time on the case in light of the standards of the private bar and because Taylor has experience and knowledge regarding the STAA and STAA cases that should have enabled him to spend less time. It also argued that there was only one issue at the one-day trial - whether it had violated 49 U.S.C.A. § 31105(a)(B)(i). Owen Trucking also argues that Taylor should not have had to spend as much time as he did researching and drafting briefs in the case because he did not present any legally or factually difficult peculiarities, which would have necessitated the expenditure of time. It noted that Shields was awarded a total amount of \$21,462.90 while Taylor was awarded \$60,630.61 in attorneys' fees and expenses. Owen Trucking argues that the ALJ should have reduced the lodestar amount by fifty percent.

³ S. R. D. & O. at 1.

⁴ S. R. D. & O. at 4.

Third, Owen Trucking argues that the ALJ erred in finding that Taylor was entitled to reimbursement for his travel expenses because Taylor failed to show that it was necessary for Shields to hire counsel outside of the relevant community of Roanoke, Virginia. Owen Trucking again cited *Powell* for the proposition that the party seeking attorneys' fees has the burden of overcoming the presumption that the relevant community is where the court sits. Owen Trucking argues that if counsel in the relevant community would not reasonably have incurred travel expenses then counsel outside of the relevant community should not be compensated for travel expenses, unless the complainant has shown that outside counsel was necessary to the litigate the case.

Finally, Owen Trucking argues that the ALJ erred in finding that Taylor's expert witness should be compensated at the full rate for his travel when litigating attorneys are limited to one-half compensation for their travel. Owen Trucking stated that it was logical to believe that a fifty percent reduction for the travel expenses of anyone involved in the litigation would be appropriate, citing two cases.⁵

Shields's counsel argues that the Board should adopt the ALJ's S. R. D. & O. awarding attorneys' fees and costs and requests that we award fees and costs incurred in connection with this proceeding. Shields's counsel argues that his hourly rate was reasonable as it is similar to that of other attorneys who practice before the Department of Labor and to rates the Board has previously approved. Shields's counsel asserts that the amount of time that was spent on the case was reasonable because the trial was expected to last several days, counsel had to contend with an unrepresented respondent, counsel had to bring a motion to compel discovery, and finally, that counsel had to review documents that Owen Trucking did not produce until the day before the hearing.

LEGAL STANDARD

Where, as here, a STAA complainant has prevailed on the merits, he or she may be reimbursed for litigation costs, including attorneys' fees. The Act provides that the ALJ may include an award of the complainant's costs and expenses, including attorneys' fees that were reasonably incurred in bringing and litigating the case, if the complainant has prevailed.⁶ Generally, the lodestar method of calculation is used, which requires multiplying the number of hours reasonably expended in bringing the litigation by a reasonable hourly rate.⁷

⁵ *Clay v. Castle Coal & Oil Co. Inc.*, 1990-STA-037 (Sec'y June 3, 1994); *In re Agent Orange Prod. Liability Litigation*, 611 F. Supp. 1296, 1320, 1349 (E.D.N.Y. 1985).

⁶ 49 U.S.C.A. § 31105(b)(3)(B); 29 C.F.R. § 1978.109(a).

⁷ *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

In reviewing attorneys' fee awards, the ARB follows the fee-shifting precedents of the Supreme Court and other federal courts.⁸ Once it is established that the plaintiff has prevailed, *Hensley v. Eckerhart*,⁹ provides the framework for deciding the merits of fee petitions. In *Eckerhart*, the Court wrote, "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate."¹⁰ This lodestar "calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services."¹¹ The district court may reduce the award for inadequately documented hours, or for hours that were not "reasonably expended" due to overstaffing or inexperience.

The petitioner bears the burden of proof that claimed hours of compensation are adequately demonstrated and reasonably expended.¹² The "reasonableness of the time expended must . . . be judged by standards of the private bar" so that "hours claimed are to be examined in detail with a view to the . . . value of the work product to the client in light of the standards of the private bar."¹³ Faced with an unreasonable number of hours, the court can reduce the lodestar fee by a reasonable amount or percentage, without performing an item-by-item accounting.¹⁴

The other element of the lodestar calculation (besides time reasonably expended) is the reasonableness of plaintiff's attorney's hourly rates. The Supreme Court has held that fees are to be "calculated according to the prevailing market rates in the relevant community."¹⁵ It is the petitioners' burden "to produce satisfactory evidence – in addition to the attorney's own affidavits – that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation."¹⁶ In deciding

⁸ See, e.g., *Scott v. Roadway Express*, ARB No. 01-065, ALJ No. 1998-STA-008, slip op. at 5 (ARB May 29, 2003); *Gutierrez v. Regents of the Univ. of Cal.*, ARB No. 99-116, ALJ No. 1998-ERA-019, slip op. at 12 (ARB Nov. 13, 2002).

⁹ 461 U.S. 424 (1983).

¹⁰ *Id.* at 433.

¹¹ *Id.*

¹² *Jackson v. Butler & Co.*, ARB Nos. 03-116, 03-144; ALJ No. 2003-STA-026, slip op. at 10 (ARB Aug. 31, 2004) (citations omitted).

¹³ *Id.*, slip op. at 11 (quoting *DiFilippo v. Morizio*, 759 F.2d 231, 235-36 (2d Cir. 1985)).

¹⁴ *Id.* (citations omitted).

¹⁵ *Blum v. Stenson*, 465 U.S. 886, 895 (1984).

¹⁶ *Id.* at 895 n.11; see also *Eddleman v. Switchcraft, Inc.*, 965 F.2d 422, 424 (7th Cir. 1992) (market rate is rate that lawyers of similar ability and experience in community normally charge their paying clients for type of work in question).

the “prevailing market rates in the relevant community,” the court may consider, among other things, rates plaintiff’s attorney charges paying clients,¹⁷ and rates other lawyers in the community charge for similar work.¹⁸

Finally, the party seeking a fee award must submit evidence documenting the hours worked and the rates claimed. As we have said, “a complainant’s attorney fee petition must include adequate evidence concerning a reasonable hourly fee for the type of work the attorney performed and consistent [with] practice in the local geographic area, as well as records identifying the date, time, and duration necessary to accomplish each specific activity, and all claimed costs.”¹⁹

DISCUSSION

We begin with the reasonableness of Shields’s counsel’s hourly rates because that affects how we view the number of hours expended. Taylor requested for approval of an hourly rate of \$325.00 for his work beginning on June 1, 2007, and \$275.00 per hour for his work before that time. He alleged before the ALJ that he had practiced law for 23 years and has a nationwide law practice, handling approximately 135 cases arising under the Act including 51 administrative trials before the OALJ. As the ALJ noted, Taylor worked for ten years prior to this in the field of transportation, and left as an executive. The ALJ also noted that Taylor’s billing rate was less for comparable experience and expertise than many similarly situated lawyers in his region of the country and that Taylor had provided affidavits from experienced attorneys who alleged that his rate was reasonable. Further, the ALJ found that having had an opportunity to view the proceedings, he observed that Taylor was highly experienced and was specialized in a narrow area of the law that is arcane to many other lawyers. Based on a full review of the record, the ALJ approved the requested hourly rates. We find that the ALJ’s approval of the hourly rates was reasonable. Therefore, we approve the rates.

We turn to the other element of the lodestar calculus, the number of hours reasonably expended. The ALJ noted that due to Owen Trucking’s pro se status at and before the hearing, discovery was difficult for Shields’s counsel. The ALJ found that Shields’s brief and stipulations were very complete and helpful to him in drafting his decision. He found that the charges for the time spent working on them were reasonable. The ALJ also found specific charges not duplicative as asserted by Owen Trucking, because the time that Taylor spent with Shields and with his expert witness, John Griffith, was reasonable for hearing preparation. The

¹⁷ *Connolly v. National Sch. Bus. Serv., Inc.*, 177 F.3d 593, 596 (7th Cir. 1999) (Title VII); *Spegon v. Catholic Bishop of Chicago*, 175 F.3d 544, 555 (7th Cir. 1999) (FLSA); *Cooper v. Casey*, 97 F.3d 914, 920-21 (7th Cir. 1996) (§ 1983 inmate).

¹⁸ *Spegon*, 175 F.3d at 555; *People Who Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1312 (7th Cir. 1996) (school desegregation; billing rates of other attorneys in same firm not irrelevant).

¹⁹ *Gutierrez*, slip op. at 13 (internal quotations and citations omitted).

ALJ specifically found that Taylor was required to spend additional time because Owen Trucking was ignorant of procedure or failed to cooperate in discovery. The ALJ also noted that Taylor used a tenth of an hour billing method and did not charge for clerical items. After a thorough review, the ALJ found that the time submitted was not excessive. We have fully reviewed the fee petition and agree with the ALJ's finding that the amount of time expended by Taylor on Shields's claim before the ALJ was reasonable.

The ALJ found that Taylor's travel time was compensable even though he was not local counsel because Owen Trucking did not direct him to a prohibition on travel on the basis that local counsel is preferred. He noted that Taylor reduced his travel time by fifty percent even though travel time is generally compensable. Because he found that Taylor's hourly rate was reasonable, the ALJ found that Owen Trucking was responsible for his charges for travel time. We agree with the ALJ that Taylor's requested amount of compensation for his travel time was reasonable.

The ALJ found that the travel time of Shields's expert witness was allowable. He declined to deduct half of the witness travel expense as Owen Trucking requested because the case Owen Trucking cited²⁰ did not mention travel fees for a witness and did not support the request. The ALJ's decision to allow the expert witness travel fees was reasonable. We note that the ALJ relied in part on Griffith's testimony about the length of the trip from Baltimore, Maryland to Gainesville, Georgia, in making his decision.²¹

Finally, we consider costs. We affirm the award of \$6,031.76 for costs and \$543.75 for paralegal fees as reasonable.

We find that the ALJ's fee award is reasonable. As the attorneys' fee figure is reasonable we **APPROVE** the recommended award of \$60,630.61 in fees and costs.

CONCLUSION

Respondent Owen Trucking shall pay to Shields's counsel the amount of \$60,630.61 in attorney fees and costs reasonably incurred in bringing the complaint.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Chief Administrative Appeals Judge

²⁰ *Clay v. Castle Coal & Oil Co., Inc.*, 1990-STA-037 (Sec'y June 3, 1994).

²¹ R. D. & O. at 21-22.