

FILED

UNITED STATES COURT OF APPEALS

MAY 7 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

AEGIS DEFENSE SERVICES,
LLC/ALLIED WORLD ASSURANCE
COMPANY,

Petitioner,

v.

MATHEW MARTIN; AEGIS DEFENSE
SERVICES, LLC/CONTINENTAL
INSURANCE COMPANY; DIRECTOR,
OFFICE OF WORKERS'
COMPENSATION PROGRAMS,

Respondents.

No. 19-70566

BRB Nos. 18-0122
18-0122A

Benefits Review Board

ORDER

Before: CALLAHAN and CHRISTEN, Circuit Judges, and RAKOFF,* District Judge.

I
Background

We granted respondent Mathew Martin's motion for attorneys' fees under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 928(a), and referred to the Appellate Commissioner the determination of an appropriate amount of fees. *See* 9th Cir. R. 39-1.9; *see also Aegis Def. Servs., LLC/Allied*

* The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

World Assurance Co. v. Martin, 829 F. App'x 216, 219 (9th Cir. 2020). The referral to the Appellate Commissioner is withdrawn.

II Discussion

Martin requests \$12,781.50 in fees for 23.05 hours of 2019-20 work at \$550 per hour by attorney Charles Robinowitz of Portland, Oregon and 0.65 hour of work at \$160 per hour by a paralegal. Aegis Defense Services, LLC/Allied World Assurance Company (Aegis/Allied) objects to Martin's requested fees, arguing that the court should award \$389 per hour for Robinowitz.

A. Reasonable Hourly Rates

This court recently held that an Administrative Law Judge (ALJ) and the Benefits Review Board (BRB) committed legal error in determining that \$349.85 was a reasonable 2016 hourly rate for Robinowitz. *See Seachris v. Brady-Hamilton Stevedore Co.*, ___ F.3d ___, 2021 WL 1523252, at *6, *11 (9th Cir. 2021). The court remanded for further proceedings, noting that the 2017 Oregon State Bar (OSB) Survey reported that Portland attorneys in all areas of private practice with more than 30 years' experience like Robinowitz charged a median hourly rate of \$425, that the 2017 OSB Survey reported that the 75th percentile of

those attorneys charged an average hourly rate of \$495, and that this evidence supported the requested 2016 hourly rate of \$450 for Robinowitz. *Id.* at *11.

The court held that the ALJ's rejection of the OSB Survey chart reporting hourly rates based on years of experience, rather than by practice area, was not supported by substantial evidence, and noted that Ninth Circuit decisions approved of using the years-of-experience chart to determine reasonable hourly rates. *Id.* at *10. The court also vacated the ALJ's decision to place Robinowitz in the 75th percentile of all Portland attorneys with more than 30 years' experience, because that decision appeared to have been influenced by the ALJ's unwarranted irritation with a brief filed by Robinowitz. *Id.* But the court observed that the ALJ reasonably could have placed Robinowitz in the 95th percentile of those attorneys, as this court and the BRB had done on other occasions with respect to Robinowitz's appellate work. *Id.*

The 2017 OSB Survey reported that the 95th percentile of Portland attorneys in all areas of private practice with more than 30 years' experience like Robinowitz charged an average hourly rate of \$610. In light of the *Seachris* opinion, the 2017 OSB Survey reports of a \$495 hourly rate for the 75th percentile and a \$610 hourly rate for the 95th percentile of all Portland attorneys with more than 30 years' experience, and the increased cost of services since the 2017 OSB Survey, the

requested \$550 hourly rate for Robinowitz's 2019-20 work here is reasonable and is awarded. Notably, the *Seachris* court approved of the ALJ's adjustment of OSB Survey hourly rates to account for inflation. *Id.* at *5, *6, *8.

Aegis/Allied does not object to Martin's requested \$160 hourly rate for a paralegal with 10 years' experience. The requested paralegal hourly rate is reasonable and is awarded. *Id.* at *4, *12 (instructing the BRB to award the requested \$165 hourly rate for 2016 for a Robinowitz paralegal with more than 20 years' experience; noting that this court had awarded the same hourly rate for 2013 work by that paralegal).

B. Reasonably Expended Hours

On Ninth Circuit Form 9, Martin states that Robinowitz and the paralegal spent the requested time as follows:

<u>Description of Services</u>	<u>Hours</u>
Interviews and Conferences	2.05
Obtaining and Reviewing Records	8.05
Legal Research	1.50
Preparing Brief	12.10
<u>Preparing for and Attending Oral Argument</u>	<u>0</u>
Total	23.70

Aegis/Allied does not object to the requested hours. Robinowitz and the paralegal reasonably spent 23.7 hours preparing a mediation questionnaire, two motions for extensions of time, a motion to strike the excerpts of record, a 2,859-word answering brief, and a motion for attorneys' fees, as well as participating in mediation. The petition for review was submitted on the briefs without oral argument, and Martin did not file a reply to Aegis/Allied's opposition to the fee motion. The requested hours are awarded.

III Conclusion

Pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 928(a), attorneys' fees in the amount of \$12,781.50 are awarded in favor of respondent Mathew Martin and against petitioner Aegis Defense Services, LLC/Allied World Assurance Company. This order amends the court's mandate.