UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

FILBERT C. VIALPANDO, Plaintiff, v. CHEVRON MINING INC., Defendant.	No. 1:18-cv-00251-BRB-JHR

ORDER ADOPTING AS MODIFIED INITIAL, SUPPLEMENTAL, AND AMENDED SUPPLEMENTAL MAGISTRATE JUDGE'S PROPOSED FINDINGS & RECOMMENDATION AS TO ATTORNEY'S FEES AND COSTS TO BE AWARDED

Plaintiff Filbert Vialpando filed suit against Defendant Chevron Mining Inc. in the District of New Mexico, alleging Plaintiff was entitled to twenty percent additional compensation and interest on Chevron's untimely payments of the lump sum and monthly benefits awarded under the Black Lung Benefits Act. After this Court entered final judgment in favor of Plaintiff (Doc. 20) and denied Plaintiff's Rule 59 motion (Doc. 25), Plaintiff filed a motion for attorney's fees and costs (Doc. 26). Defendant filed a response in opposition to the fee petition (Doc. 27). Then, Plaintiff filed a reply, wherein he requested additional fees incurred while defending the fee petition (Doc. 29). This Court granted Plaintiff's motion for attorney's fees and costs and referred the matter to the United States Magistrate to determine the amount of fees and costs to be awarded (Doc. 32).

The magistrate judge entered Magistrate Judge's Proposed Findings and Recommendation as to Amount of Attorney's Fees and Costs to be Awarded (PRFD) (Doc. 33) in which the magistrate judge recommended that Plaintiff be awarded a total of $13,620.88 in attorney's fees and costs for the work performed on this matter. The magistrate judge also recommended the fee be paid separately, allocating $9,958.38 to the Appalachian Citizens' Law Center and $3,762.50 to Friedman Boyd Hollander Goldberg Urias & Ward, P.A. Thereafter, Plaintiff filed a response to the PRFD, requesting an additional $962.50 in attorney's fees for the time expended preparing a reply to Defendant's response (Doc. 34). The magistrate judge entered a Supplemental Proposed Findings and Recommendation as to the Amount of Attorney's Fees and Costs to be Awarded (Supplemental PRFD), which recommended this Court award $962.50 for "fees on fees," bringing the total attorney's fees recommended to be award to the Appalachian Citizens' Law Center to $10,820.88. The magistrate judge also entered an Amended Supplemental Proposed Findings and Recommendation as to the Amount of Attorney's Fees and Costs to be Awarded (Amended Supplemental PRFD), to clarify the previous $9,958.38 fees award was a scrivener's error meant to be $9,858.38.[1]

[1] The magistrate judge recommended the total fee award to Plaintiff is $13,620.88, but this Court construes this figure as a scrivener's error because the total recommended awards add up to $14,583.38. Specifically, the magistrate judge recommended this Court award $9,858.38 to the Appalachian Citizens' Law Center for fees requested in Doc. 26, plus $962.50 to Appalachian Citizens' Law Center for "fees on fees" requested in Doc. 29, plus $3,762.50 to Friedman Boyd Hollander Goldberg Urias & Ward, P.A. for fees requested in Doc. 26.

Now before this Court are three recommendations from the magistrate judge: the PRFD, the Supplemental PRFD, and the Amended Supplemental PRFD. Having reviewed the relevant materials, the Court finds the reasoning set forth in the PRFDs to be correct. It is hereby ORDERED that the Court adopts the PRFD, the Supplemental PRFD, and the Amended Supplemental PRFD, as modified herein at footnote 1. Accordingly, Plaintiff is awarded a total of $14,583.38 in attorney's fees and costs for the work performed on this matter by his attorneys to be paid separately—$10,820.88 to the Appalachian Citizens' Law Center and $3,762.50 to Friedman Boyd Hollander Goldberg Urias & Ward, P.A. This order disposes of all outstanding motions.

Entered for the Court
this 10th day of July 2019

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Bobby R. Baldock
United States Circuit Judge
Sitting by Designation