

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 18 2026

FOR THE NINTH CIRCUIT

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

JERRY W. HILL,

Petitioner,

v.

DIRECTOR, OFFICE OF WORKER'S
COMPENSATION PROGRAMS; LOUIS
DREYFUS CORPORATION; ZURICH
AMERICAN INSURANCE COMPANY,

Respondents.

No. 24-7861

Agency No. 23-0208
Benefits Review Board

MEMORANDUM*

On Petition for Review of an Order of the
Benefits Review Board

Submitted September 16, 2026**
Portland, Oregon

Before: W. FLETCHER, FRIEDLAND, and DE ALBA, Circuit Judges.

Jerry W. Hill petitions for review of a Benefits Review Board (“BRB”) decision affirming an order by an Administrative Law Judge (“ALJ”) awarding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

attorney's fees to his counsel, Charles Robinowitz, under the Longshore and Harbor Workers' Compensation Act ("Longshore Act"), 33 U.S.C. § 928.

Robinowitz sought attorney's fees for his services calculated with an hourly rate of \$675; the ALJ awarded, and the BRB affirmed, fees with an hourly rate of \$617.

We review decisions of the BRB for "errors of law and adherence to the substantial evidence standard." *Port of Portland v. Dir., Off. of Workers Comp. Programs*, 932 F.2d 836, 838 (9th Cir. 1991). We have jurisdiction under 33 U.S.C. § 921(c), and we deny the petition.

An ALJ determines the amount of an attorney's fee award under the Longshore Act in two steps. First, the ALJ evaluates whether the applicant has met its "initial burden of production, under which it must 'produce satisfactory evidence' establishing the reasonableness of the requested fee." *United States v. \$28,000.00 in U.S. Currency*, 802 F.3d 1100, 1105 (9th Cir. 2015) (quoting *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984)). Satisfactory evidence "must include proof of market rates in the relevant community (often in the form of affidavits from practitioners), and detailed documentation of the hours worked." *Id.* (citations omitted). Second, "[i]f the applicant discharges its legal obligation as to the burden of production, the [ALJ] then proceeds to a factual determination as to whether the requested fee is reasonable." *Id.*

In this case, the ALJ concluded that Robinowitz marshaled satisfactory

evidence to meet his initial burden at step one. Accordingly, the ALJ moved on to step two, weighing the evidence that Robinowitz offered in support of his requested hourly rate. At that stage, the ALJ concluded that much of Robinowitz’s evidence was entitled to “little weight” in a factual determination of the market rate. The ALJ gave “controlling weight” in that determination to another piece of evidence that Robinowitz offered, the 2017 Oregon State Bar Economic Survey (“OSB Survey”), deeming it “an appropriate starting metric for setting a proxy rate.” To calculate Robinowitz’s hourly fee, the ALJ used OSB Survey data on hourly rates of attorneys in Portland who were in the seventy-fifth percentile of their cohort and had more than thirty years of experience, then adjusted for inflation. The BRB affirmed, with one dissenter.

In his petition, Hill argues that the ALJ erred in giving little weight—or, as he contends, no weight—to some of the evidence supporting Robinowitz’s requested fee of \$675/hour. In particular, Hill contests the ALJ’s treatment of the 2020 Morones Survey of Commercial Litigation Fees (“the Morones Survey”) and a declaration from Ronald L. Bonaparte, another Oregon lawyer (“the Bonaparte Declaration”). The ALJ’s weighing of that evidence, Hill argues, contravenes our decision in *Seachris v. Brady-Hamilton Stevedore Co.*, 994 F.3d 1066, 1080 (9th Cir. 2021).¹ We disagree.

¹ Contrary to Hill’s arguments, a greater-than-ten-percent difference between

Unlike the ALJ here, the ALJ in *Seachris* concluded that counsel (also Robinowitz) had failed to meet his initial burden of production—at evidentiary step one. *Id.* at 1074. Reviewing that decision, we concluded that the ALJ had “improperly rejected” evidence that Robinowitz had presented to establish the prevailing market rate. *Id.* at 1071. We noted that “[t]he ALJ’s concerns at most go to the *weight* of the evidence, not its sufficiency.” *Id.* at 1077 (emphasis added). This case, by contrast, centers on step two—the ALJ’s factual determination of the appropriate rate. *\$28,000.00 in U.S. Currency*, 802 F.3d at 1105.

Even assuming—without deciding—that Hill is correct that the legal analysis *Seachris* applied at step one is equally applicable at step two, Hill’s challenge to the ALJ’s decision here still fails. In giving little weight to the Morones Survey and the Bonaparte Declaration, the ALJ did not repeat the mistakes that our court identified in *Seachris*.

Evaluating the Morones Survey, the ALJ here did not “conflat[e] commercial litigation and complex litigation.” *Seachris*, 994 F.3d at 1079. Rather,

requested and awarded attorney’s fees does not trigger special review under *Moreno v. City of Sacramento*, 534 F.3d 1106 (9th Cir. 2008). Instead, *Moreno* instructs that a cut in the number of hours compensated that exceeds a ten percent “haircut” of those requested requires more than cursory explanation so that appellate review is possible. *Id.* at 1112, 1114.

the ALJ more specifically considered the twenty-one firms that responded to the Morones Survey, including their billing structures. Although the ALJ here observed that Robinowitz delegates less of his work than do the commercial litigators reflected in the Morones Survey, this ALJ did not mischaracterize whether Robinowitz delegates work. *Id.* at 1079-80. What is more, the ALJ here did not treat the presence or absence of any delegation by Robinowitz as a dispositive factor; it was one of multiple reasons the ALJ explained for giving “little weight” to the Morones Survey. And unlike in *Seachris*, the ALJ here relied on years-of-experience data as a dominant factor in choosing a rate. *Id.* at 1080.

Nor did the ALJ err in giving little weight to assertions in the Bonaparte Declaration that Robinowitz should receive an hourly rate of a ninety-fifth percentile attorney in Portland. In *Seachris*, we opined that placing Robinowitz in either the seventy-fifth or ninety-fifth percentile was “a judgment call that the ALJ could reasonably have resolved either way.” *Id.* at 1080. Here, the ALJ placed Robinowitz in the seventy-fifth percentile. That judgment call is supported by substantial evidence in the record.

Finally, unlike in *Seachris*, here there is no evidence of ALJ bias against Robinowitz. *Id.* at 1081, 1084. Indeed, many aspects of the ALJ’s analysis in this case were very favorable to Robinowitz, including that the ALJ accepted Robinowitz’s recommendation to use Portland as the relevant market; awarded an

even higher than requested rate to Robinowitz's associate; and gave "little weight" or "no weight" to evidence offered by the employer and insurance carrier to rebut Robinowitz's requested rate.

Petition **DENIED.**