

BRB No. 01-0920

CARL RICHARDSON )  
 )  
 Claimant )  
 )  
 GREGORY E. CAMDEN )  
 )  
 Respondent )  
 )  
 v. )  
 )  
 NEWPORT NEWS SHIPBUILDING ) DATE ISSUED: August 19, 2002  
 AND DRY DOCK COMPANY )  
 )  
 Self-Insured )  
 Employer-Petitioner ) DECISION and ORDER

Appeal of the Supplemental Decision and Order Granting Attorney Fees of Daniel A. Sarno, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna, Breit, Klein & Camden, L.L.P.), Norfolk, Virginia, for respondent.

Benjamin M. Mason (Mason, Cowardin & Mason, P.C.), Newport News, Virginia, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Granting Attorney Fees (2000-LHC-2190, 2001-LHC-0061) of Administrative Law Judge Daniel A. Sarno, Jr., rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with the law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant injured his left knee on December 1, 1998, in the course of employment. In

May 2000, the district director referred the case to the Office of Administrative Law Judges. Claimant was represented by Attorney Gregory Camden at the time. On November 15, 2000, Mr. Camden informed the administrative law judge that he was no longer representing claimant, and that claimant had retained Robert Walsh as his attorney. On January 22, 2001, the administrative law judge issued an Order of Remand in which he stated that the parties had reached an agreement as to the period of temporary total disability benefits to which claimant is entitled, and that therefore the scheduled hearing was cancelled and the case was being remanded to the district director for appropriate action.

Mr. Camden thereafter requested a fee for services rendered on claimant's behalf between December 21, 1998, and November 22, 2000, for 18.87 hours at an hourly rate of \$165 for work he performed, one hour at an hourly rate of \$125 for junior counsel, 2.9 hours at \$65 per hour for paralegal services, and \$46.55 in expenses, for a total fee of \$3,440.05.

After reviewing Attorney Camden's fee petition, the administrative law judge noted that the matter was not referred to the Office of Administrative Law Judges until May 25, 2000, and thus disallowed a fee for those services performed prior to that date. He concluded that the remaining time was reasonable in light of the results obtained. Accordingly, he awarded Mr. Camden a fee of \$1,257.55, representing 8.47 hours of work,<sup>1</sup> plus \$29.55 in expenses.

On appeal, employer challenges the administrative law judge's fee award to Mr. Camden.<sup>2</sup> Employer also alleges that it did not object below, because it had not received a copy of the fee petition and was not aware one had been submitted. Mr. Camden responds, urging affirmance of the administrative law judge's fee award.

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<sup>1</sup>The administrative law judge determined the fee by multiplying 1.4 hours of paralegal work by \$65, and adding it to 7.07 hours at the \$165 attorney hourly rate.

<sup>2</sup>Employer does not appeal the fee award of \$4,000 to Attorney Walsh.

Employer argues that it is not liable for an attorney's fee to Mr. Camden, as he did not successfully prosecute the claim, because at the time Mr. Camden's services were terminated, claimant had not obtained benefits from the employer and there was no agreement by employer to pay benefits. Under Section 28(a) of the Act, if an employer declines to pay any compensation within 30 days after receiving written notice of a claim from the district director, and the claimant's attorney's services result in a successful prosecution of the claim, the claimant is entitled to an attorney's fee award payable by the employer. 33 U.S.C. §928(a). We reject employer's argument that it is not liable for a fee for Mr. Camden's services, as a claimant's ultimate success renders an employer liable for all necessary work performed leading to that success. See *Stratton v. Weedon Engineering Co.*, 35 BRBS 1 (2001); see also *Hole v. Miami Shipyard Corp.*, 640 F.2d 769, 13 BRBS 237 (5<sup>th</sup> Cir. 1981); see generally *Mobley v. Bethlehem Steel Corp.*, 20 BRBS 239 (1988), *aff'd*, 920 F.2d 558, 24 BRBS 49(CRT) (9<sup>th</sup> Cir. 1990); *Hamilton v. Ingalls Shipbuilding, Inc.*, 28 BRBS 125 (1994) (decision on remand). Moreover, contrary to employer's contention, in the absence of duplicative or unnecessary services, employer may be held liable for the services of more than one attorney. See generally *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000); *Parks v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1998), *aff'd mem.*, 202 F.3d 259 (4th Cir. 1999)(table). As employer does not contend that Mr. Camden's service were unnecessary, and as claimant's claim was successfully prosecuted, we affirm the administrative law judge's fee award to Mr. Camden.<sup>3</sup>

Accordingly, we affirm the administrative law judge's fee award to Attorney Camden, payable by employer.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY

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<sup>3</sup>As we address the merits of employer's contentions, we need not consider whether employer waived its right to challenge the fee award on appeal by not objecting to the fee petition before the administrative law judge. Employer contends it did not receive Mr. Camden's fee petition. We note only that the administrative file before the Board contains a copy of a letter from Attorney Camden to the administrative law judge dated January 26, 2001, in which he requests an attorney's fee in this matter. This letter reflects that a copy of the letter was sent to employer.

Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge