

BRB No. 99-0338

MICHAEL E. BLUIETT)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
TRINITY PLATZER SHIPYARD)	DATE ISSUED: <u>Dec. 21, 1999</u>
)	
and)	
)	
RELIANCE NATIONAL INDEMNITY)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Supplemental Decision and Order - Awarding Attorney's Fees of James W. Kerr, Jr., Administrative Law Judge, United States Department of Labor.

Bob Wortham (Reaud, Morgan & Quinn, Inc.), Beaumont, Texas, for claimant.

Collins C. Rossi, Metairie, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BROWN, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Supplemental Decision and Order - Awarding Attorney's Fees (96-LHC-1261) of Administrative Law Judge James W. Kerr, 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 may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See, e.g., Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999).

Claimant, a dry foreman, was injured during the course of his employment on October 26, 1993, when his hand was caught in a bench grinder. Employer subsequently paid

claimant compensation for various periods of disability as well as for a six percent permanent partial disability to his right hand. Before the administrative law judge, claimant sought additional disability compensation and medical benefits. In his Decision and Order, the administrative law judge found, *inter alia*, that claimant's present cervical condition did not arise out of the subject work accident, but that claimant was incapable of resuming his usual employment duties with employer as a result of the restrictions placed on claimant due to his hand injury. Thus, the administrative law judge awarded claimant temporary total disability compensation from the date of injury and continuing, as well as related medical expenses.

Subsequent to the administrative law judge's decision, claimant's counsel filed a fee petition, to which employer filed objections. The administrative law judge, stating that certain entries in this petition lacked either a complete statement of the nature of the services rendered or failed to indicate by whom the services were performed, thereafter issued an Order Requiring Clarification of the Attorney's Fee Application. Claimant's attorney then filed an Amended Itemized Fee Request, seeking a fee totaling \$51,743.16, which represented an attorney's fee of \$38,020 for 152.08 hours of services at \$250 per hour, a legal assistant's fee of \$3,527.25, representing 47.03 hours of services at \$75 per hour, plus expenses of \$10,195.91. In his Supplemental Decision and Order, the administrative law judge reduced both the hourly rates and the number of hours sought by counsel and awarded a total fee of \$21,244.34, representing 102.3 hours of attorney services at \$150 per hour, 10.53 legal assistant hours at \$60 per hour, and \$5,267.54 in expenses.

Claimant now appeals, contending that the administrative law judge erred in reducing his hourly rate, reducing and/or eliminating certain requested hours, and reducing his requested expenses. Employer responds, urging affirmance.

Claimant initially maintains that the administrative law judge erred in reducing his requested hourly rate to \$150 per hour. We disagree. After considering the contentions of both parties and the customary rates awarded in the Houston, Texas area, as well as the expertise of counsel, the administrative law judge found that a reasonable and appropriate rate for the geographic region where this case arose was \$150 per hour. In his brief, claimant has not satisfied his burden of showing that the administrative law judge abused his discretion in awarding an hourly rate of \$150 for work performed by claimant's counsel. Accordingly, we affirm the administrative law judge's hourly rate determination in this case. *See Story v. Navy Exchange Service Center*, 33 BRBS 111 (1999); *Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

Claimant next alleges that the administrative law judge abused his discretion in eliminating four of the eighteen charges attributed to "letters to Rossi," *i.e.*, employer's counsel. The administrative law judge denied these charges because claimant failed to describe with sufficient particularity the nature of the letters and, thus, the administrative law judge concluded that he was thus unable to determine whether the services rendered were

reasonable and necessary. *See* Supplemental Decision and Order at 4. Claimant's mere assertion that his counsel's signature on these letters is sufficient justification for approving the time sought is insufficient to meet his burden of proving that the administrative law judge abused in his discretion in this regard.¹ Accordingly, we affirm the administrative law judge's decision to deny counsel the time spent on the four pieces of correspondence at issue. *See* 20 C.F.R. §702.132.

Claimant also objects to the administrative law judge's decision to deny counsel reimbursement for the number of hours sought preparing for the second hearing in this case. Specifically, claimant argues that because additional witnesses and issues were brought forth during this second hearing, counsel should have been awarded the additional time sought preparing for that hearing. The record reflects that two hearings were held in this case, on August 14, 1997, and March 27, 1998, respectively. Claimant's attorney requested 30 hours of preparation time for himself and 15 hours for his legal assistant for each of these hearings. In addressing these requests, the administrative law judge found that 45 hours of preparation for each of the hearings, *i.e.*, a total of 90 hours, was excessive, unreasonable, and duplicative; the administrative law judge thus denied the second 45 hour request. *See* Supplemental Decision and Order at 4. Although claimant asserts that the facts changed based on the issues created by employer following the initial hearing, claimant fails to specify what additional issues were raised. Claimant's mere assertions to the contrary are insufficient to meet his burden of proving that the administrative law judge abused in his discretion in this regard, and the administrative law judge's reduction in the requested preparation hours is affirmed. *See Ross*, 29 BRBS at 42; *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981).

¹We note that claimant, in his amended fee petition to the administrative law judge, failed to correct these deficiencies.

Claimant next objects to the administrative law judge's reduction in the requested expenses.² Pursuant to Section 28(d), 33 U.S.C. §928(d), of the Act, an administrative law judge may assess litigation costs and requires analysis of the reasonableness and necessity of the costs incurred by counsel in litigating the case. *See generally Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988).

In the instant case, claimant challenges the administrative law judge's reduction in the charges rendered by Mr. Kramberg, claimant's vocational expert. In support of its allegation of error, claimant contends only that Mr. Kramberg's services were necessary to nullify employer's vocational expert, who opined that claimant was capable of performing suitable alternate employment, and that his charges were "reasonable." *See* Claimant's brief at 2. In addressing claimant's request for reimbursement of Mr. Kramberg's charges, the administrative law judge initially found Mr. Kramberg's services to be unnecessary to the outcome of the case since claimant had not been released to return to work. Moreover, the administrative law judge reviewed Mr. Kramberg's invoices and found the time requested to be both excessive and unreasonable. Based upon these findings, the administrative law judge found employer to be liable for \$3,528.38, *i.e.*, one-half of the total charge submitted by Mr. Kramberg. Although claimant may have been justified in acquiring the services of Mr. Kramberg in support of his position that he is presently unemployable, on appeal he has provided no support for his allegation that the administrative law judge erred in reducing the actual fee charged by Mr. Kramberg based upon his determination that the time requested was excessive and unreasonable. Accordingly, we affirm the administrative law judge's reduction in the charges submitted by claimant's vocational expert. *See generally Welch v. Pennzoil Co.*, 23 BRBS 395 (1990).

Lastly, claimant avers that the administrative law judge erred in denying the higher rate sought by Dr. Alo for his appearance at a July 31, 1997, deposition. We disagree. Prior to the initial hearing in this case, Dr. Alo was scheduled to be deposed on July 31, 1997. The parties appear to be in agreement that employer's counsel did not appear at this deposition, and that a second deposition of Dr Alo was thereafter scheduled. The administrative law considered Dr. Alo's fee of \$2,000 for his presence at the initial July 31, 1997, deposition to

²Claimant's contention that the administrative law judge erred in not awarding the \$146.15 charged for the transcript of claimant's deposition is without merit; the administrative law judge awarded claimant the cost of this transcript. *See* Supplemental Decision and Order at 5, item 9.

be excessive, and he thereafter reduced that fee to \$600. As the administrative law judge acted within his discretion in limiting Dr. Alo's fee to \$600 for his appearance at the July 31, 1997, deposition and this amount is reasonable, we affirm it. *See Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997).

Accordingly, the administrative law judge's Supplemental Decision and Order - Awarding Attorney Fees is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge