

BRB No. 07-0896

D.M.)
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 Claimant-Petitioner)
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 v.)
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 EAGLE MARINE SERVICES, LIMITED) DATE ISSUED: 06/26/2008
)
 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Compensation Order Approval of Attorney's Fees of Karen P. Staats, District Director, United States Department of Labor.

Daniel P. Thompson (Thompson & Delay), Seattle, Washington, for claimant.

Richard A. Nielson (Nielsen Shields, PLLC), Seattle, Washington, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Compensation Order Approval of Attorney's Fees (Case No. 14-140928) of District Director Karen P. Staats 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 law. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant alleged he suffered a work-related injury to his spine, which forced him to retire due to an inability to return to work. Employer controverted the claim. The

parties settled the claim at mediation the day before that set for the formal hearing.¹ The parties did not agree to an attorney's fee for claimant's counsel.

Subsequently, claimant's counsel submitted a fee petition for attorney services for work performed before the district director seeking \$29,345.75, representing 96.1 hours of attorney services at an hourly of \$300 per hour, plus costs of \$515.75. Employer filed objections to the hourly rate, to time spent on issues which claimant did not have standing to contest, and to various itemized entries. The district director awarded claimant's counsel a fee of \$10,755, representing 47.8 hours of attorney services at \$225 per hour, plus costs of \$515.75.

On appeal, claimant challenges the district director's reduction of the requested hourly rate and her disallowance and/or reduction of itemized entries. Employer responds, urging affirmance of the district director's order. Claimant filed a reply brief, to which employer obtained leave from the Board to respond. Claimant thereafter filed a sur-reply brief.

Claimant first challenges the hourly rate awarded by the district director for attorney services. Counsel requested an hourly rate of \$300, and employer responded that \$200 per hour was reasonable in this case. The district director awarded claimant's counsel an hourly rate of \$225. In finding this rate appropriate, the district director acknowledged counsel's assertion that he is entitled to the same rate as he receives for his ERISA work, and she noted counsel's impressive resume. Nonetheless, the district director also noted counsel's inexperience in longshore compensation claims, as evidenced by his expending time on unnecessary issues. Comp. Order at 2. The administrative law judge took into account the regulatory criteria at 20 C.F.R. §702.132 and the customary hourly rates awarded in the local compensation district, and concluded that a rate of \$225 is appropriated for the attorney's services in this case.²

We affirm the hourly rate awarded by the district director. The district director fully addressed the documentation counsel submitted in support of his requested hourly rate. The district director provided rational reasons for reducing the rate to \$225 in accordance with the regulatory criteria, and counsel has not met his burden of

¹ Employer agreed to pay claimant \$100,000 in past disability benefits and \$750 per week for life, plus medical benefits.

² The regulation at 20 C.F.R. §702.132 states: "[a]ny fee approved shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded."

demonstrating that she abused her discretion in awarding a rate appropriate for the compensation district. *See B & G Mining, Inc. v. Director, OWCP*, 522 F.3d 657 (6th Cir. 2008); *Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4th Cir. 2004); *D.V. v. Cenex Harvest State Cooperatives*, 41 BRBS 84 (2007); *Baumler v. Marinette Marine Corp.*, 40 BRBS 5 (2006).

Claimant contends the district director abused her discretion in reducing or disallowing a fee for certain itemized entries. Specifically, claimant contends the district director erred in: (1) reducing from 13.4 hours to one hour time expended for the preparation of an LS-18 pre-hearing statement; (2) disallowing all 2.6 hours claimed for preparation of claimant's disability retirement forms; (3) reducing from 1.5 hours to one-half hour time expended to explain to claimant the employer's notice of controversion; (4) disallowing all 5.7 hours for time expended on claimant's objection to employer's first application for Section 8(f) relief; and (5) disallowing all 15 hours for attorney services rendered prior to controversion.

We reject claimant's contentions. The district director did not err in disallowing most of the time claimed for the completion of the LS-18 form, noting that counsel merely needed to fill out the one-page form in order to have the claim referred to the Office of Administrative Law Judges, rather than file complete exhibit and witness lists. *See generally Welch v. Pennzoil Co.*, 23 BRBS 395 (1990). The district director also did not err in disallowing the time claimed for filling out the retirement forms, as the work was unnecessary to the longshore claim, and that claimed for responding to the Section 8(f) petition, as claimant lacks standing to address that issue. *Berkstresser v. Washington Metropolitan Area Transit Authority*, 16 BRBS 231 (1984). With regard to pre-controversion attorney services, the district director properly found that these are not the liability of employer. *Day v. James Marine, Inc.*, 518 F.3d 411 (6th Cir. 2008). Finally, claimant has not shown an abuse of the district director's discretion in reducing the time for explaining to claimant the significance of employer's notice of controversion, as she noted there was no explanation for the 1.5 hours requested. *Davenport v. Apex Decorating Co., Inc.*, 18 BRBS 194 (1986).

In sum, the district director provided a rational basis for the reductions in the fee requested by claimant's counsel, and she awarded counsel a fee in consideration of the regulatory factors at 20 C.F.R. §702.132. *Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997). Counsel has not shown an abuse of discretion on the part of the district director, and therefore, we affirm the fee award of \$10,755, plus costs of \$515.75.

Accordingly, we affirm the district director's Compensation Order Approval of Attorney's Fees

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge