BRB Nos. 02-0498
and 02-0498A

RUSSELL VARNER	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
NOVOLOG BUCKS COUNTY, INCORPORATED	)	DATE ISSUED: MAR 25, 2003
	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	
Cross-Respondent	)	DECISION and ORDER

Appeals of the Decision and Order and Supplemental Decision and Order Awarding Attorney Fees of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Daniel J. Boyce, Philadelphia, Pennsylvania, for claimant.

Michael D. Schaff (Naulty, Scaricamazza & McDevitt, Ltd.), Philadelphia, Pennsylvania, for self-insured employer.

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

PER CURIAM:

Employer appeals the Decision and Order and claimant appeals the Supplemental Decision and Order Awarding Attorney Fees (2001-LHC-02006 and 02007) of Administrative Law Judge Ralph A. Romano 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). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant, a laborer, injured his right wrist at work on September 14 and

December 8, 2000. Claimant has a pre-existing degenerative condition in his right wrist diagnosed as scapholunate advanced collapse wrist. Employer voluntarily paid claimant temporary total disability benefits from December 12, 2000, through January 3, 2001, but contested liability for disability and medical benefits after that date. The administrative law judge credited the opinions of Drs. Ruth and Grenis over that of Dr. Leatherwood because the former are claimant's treating physicians. He awarded claimant temporary total disability benefits from January 4 through February 1, 2001, and medical benefits, including the expense of recommended surgery.

Subsequently, claimant's counsel submitted a fee petition to the administrative law judge, requesting an attorney's fee of $14,132, representing 70.66 hours of attorney services at $200 per hour, plus $8,713.52 in expenses. Employer objected to the fee petition. The administrative law judge considered employer's objections, found all of them valid, and accordingly reduced the fee by a total of 14 hours and $500 in expenses. Consequently, the administrative law judge awarded claimant's counsel a fee of $11,332, representing 56.66 hours of attorney services at $200 per hour and $8,213.52 in expenses.

On appeal, employer challenges the administrative law judge's award of disability and medical benefits. Claimant appeals the administrative law judge's fee award. Both employer and claimant filed response briefs.

We first address employer's appeal of the administrative law judge's award of benefits. Employer argues that the administrative law judge erred in awarding claimant additional disability and medical benefits by crediting the opinions of Drs. Ruth and Grenis over that of Dr. Leatherwood.

We reject employer's contention of error. The administrative law judge reasonably acted within his discretion in crediting the opinions of Drs. Ruth and Grenis over that of Dr. Leatherwood as the former doctors are claimant's treating physicians. *See generally Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999); *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2d Cir. 1997); *Price v. Stevedoring Services of America*, 36 BRBS 56 (2002); *Brown v. Nat'l Steel & Shipbuilding Co.*, 34 BRBS 195 (2001); Decision and Order at 4; Cl. Exs. 10-12; Emp. Exs. 4, 5. The administrative law judge reasoned that the treating doctors are in a superior position to evaluate claimant and the impact the work incidents had upon his ability to work. The administrative law judge observed that Drs. Ruth, Grenis, and Leatherwood possess equal qualifications in that all are Board-certified orthopedic surgeons with subspecialties in hand and wrist surgery. However, the

administrative law judge also noted that while Drs. Grenis and Ruth treated claimant for various lengths of time, Dr. Leatherwood examined claimant only once. Dr. Grenis opined that the September 14 and December 8, 2000, work injuries aggravated claimant's pre-existing degenerative condition, that claimant needs surgery because of the work injuries, and that claimant should return to work on February 1, 2001. Cl. Ex. 12 at 17-18, 27-28. Dr. Ruth stated that claimant's September 14, 2000, work injury caused his underlying degenerative wrist disease to become symptomatic and that claimant's need for surgery is causally related to that work injury. Cl. Ex. 10 at 33-34. Dr. Leatherwood stated that, as of January 2, 2001, claimant fully recovered from his work injuries and that the proposed surgery on claimant's right wrist is not work-related. Emp. Exs. 4, 5 at 19-20, 25. Contrary to employer's contention, the fact that claimant's wrist condition may have been symptomatic before the work injury does not negate employer's liability, as the administrative law judge rationally credited the opinions stating that the work injuries aggravated claimant's condition and necessitated surgery. *See Director, OWCP v. Vessel Repair, Inc.*, 168 F.3d 190, 33 BRBS 65(CRT) (5th Cir. 1999); *Morehead Marine Services, Inc. v. Washnock*, 135 F.3d 366, 32 BRBS 8(CRT) (6th Cir. 1998); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990); *see also Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). As the opinions of Drs. Grenis and Ruth constitute substantial evidence supporting the administrative law judge's award of temporary total disability benefits from January 4 through February 1, 2001, and medical benefits, including the proposed surgery, we affirm the award.

We next address claimant's appeal of the administrative law judge's fee award. Claimant asserts that the administrative law judge erred in failing to provide a sufficient explanation for the reduction of his fee request. 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., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

In his Supplemental Decision and Order Awarding Attorney Fees, the administrative law judge reduced the number of hours requested by 14, specifically crediting employer's objections to various itemized entries. Employer challenged certain entries as duplicative, excessive, or unnecessary. In each instance, employer's objection to the requested number of hours sets forth the rationale for the proposed reduction in the time sought by claimant's attorney. Given the detailed nature of employer's objections, we hold that, on the facts of this case, claimant's assertions of error on appeal are insufficient to meet his burden of proving that the administrative law judge abused his discretion in reducing the number of hours

requested based on his agreement with employer's assertions. *See Pozos v. Army & Air Force Exch. Serv.,* 31 BRBS 173 (1997); *see generally Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3d Cir. 2001); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989). Therefore, we affirm the administrative law judge's fee award.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge