

JARED SWARTOUT)
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 Claimant-Petitioner)
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 v.)
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 CHRISTENSEN SHIPYARD, LIMITED) DATE ISSUED: 10/20/2005
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 and)
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 ALASKA NATIONAL INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Respondents) DECISION and ORDER

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

Megan A. Flynn (Preston Bunnell & Flynn, LLP), Portland, Oregon, for claimant.

Robert J. Burke, Jr. and Raymond H. Warns, Jr. (Holmes Weddle & Barcott), Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Compensation Order Approval of Attorney Fees (Case No. 14-137584) 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 sustained a work-related injury to his back on March 20, 2002. An informal conference was held on September 1, 2004, apparently to resolve whether employer's approval of claimant's proposed back surgery was conditioned on claimant's participation in an employer-paid tobacco cessation program prior to surgery. The district director stated that despite employer's representations at the informal conference that approval of the requested surgery was not conditional, it was clear from employer's letter to claimant's surgeon, written immediately following the informal conference, that its approval was so conditioned.¹ Attorney Fee Order at 2. The district director found that claimant's attorney is entitled to an attorney's fee paid by employer for securing an unconditional surgery authorization. *Id.*

Claimant's counsel submitted a fee petition to the district director, requesting a fee of \$1,672.50 for 6.50 hours of attorney services at an hourly rate of \$250, and .50 hours of legal assistant services at \$95 per hour. Employer filed objections.

The district director awarded claimant's counsel an attorney's fee totaling \$1,507.50. Although the district director did not reduce the hours sought, she reduced the hourly rate for attorney services to \$225 and the hourly rate for legal assistant services to \$90. The district director stated that although employer had not raised a specific objection to the hourly rates sought, she reduced the hourly rates in accordance with the customary rates in the local compensation district and taking into account the lack of complexity of the issues involved. Attorney Fee Order at 2.

On appeal, claimant contends that the district director erred in reducing the hourly rates. Claimant argues that the district director abused her discretion in reducing the requested rates because neither employer nor the district director countered counsel's representation that the requested fees are commensurate with rates charged by other attorneys. Employer responds, urging affirmance of the district director's findings as within her discretion.

We reject claimant's contention. Section 702.132, 20 C.F.R. §702.132, provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved, and the amount of benefits awarded. *See generally Finnegan v. Director, OWCP*, 69 F.3d 1039, 29 BRBS 121(CRT) (9th Cir. 1995); *Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997). In addition, consideration of the hourly rates prevailing in the community may be considered a relevant factor in setting the amount of a reasonable attorney's fee. *See generally Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 38

¹ Employer's letter to claimant's surgeon stated that "Alaska National Insurance Company authorizes this procedure but with a condition."

BRBS 37(CRT) (4th Cir. 2004); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000); *McKnight v. Carolina Shipping Co.*, 32 BRBS 165, *aff'd on recon. en banc*, 32 BRBS 251 (1998); *Moody v. Ingalls Shipbuilding, Inc.*, 27 BRBS 173 (1993)(Brown, J., dissenting on other grounds), *recon. denied*, 29 BRBS 63 (1995). We affirm the hourly rate of \$225 for attorney services and of \$90 for legal assistant services as the district director addressed the relevant factors and claimant has not shown that the district director abused her discretion in awarding an hourly rate commensurate with other awards in the compensation district and consistent with the complexity of the litigation. *See generally Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001). As the attorney's fee award is not otherwise challenged, the award of \$1,507.50 is affirmed.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge