

CONNIE KIM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
NAVY EXCHANGE SERVICE	)	DATE ISSUED: 12/29/2005
COMMAND	)	
	)	
and	)	
	)	
CRAWFORD AND COMPANY	)	
	)	
Self-Insured Employer/ Administrator-Respondents	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Jay Lawrence Friedheim (Admiralty Advocates), Honolulu, Hawaii, for claimant.

William N. Brooks, II, Long Beach, California, for employer/administrator.

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

PER CURIAM:

Claimant appeals the Supplemental Decision and Order (2003-LHC-0915) of Administrative Law Judge Richard T. Stansell-Gamm awarding an attorney’s fee 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.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *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, a barber for the Navy Exchange, fractured her left ankle on October 11, 2002, as she left the mini-mall on her way to the parking lot. Claimant filed a claim for temporary total disability benefits from October 12, 2002 through November 19, 2002, and for temporary partial disability benefits commencing mid-February 2003. Employer challenged the claim on the ground that claimant's injury did not occur in the course of her employment and that claimant was not disabled after November 19, 2002.

The administrative law judge found that claimant's injury arose out of and in the course of her employment, as the place of claimant's injury was on the business premises of the Navy Exchange. Pursuant to the parties' agreement that claimant is entitled to the temporary total disability benefits claimed if her injury occurred in the course of her employment, the administrative law judge awarded those benefits. The administrative law judge found that claimant's injury reached maximum medical improvement on November 19, 2002, and that she continued to work part-time at the barber shop, thereby limiting her to, at most, a scheduled award pursuant to Section 8(c)(4) of the Act, 33 U.S.C. §908(c)(4). As claimant did not submit any evidence concerning the degree of any permanent impairment, however, the administrative law judge denied the claim for any additional benefits. The administrative law judge awarded claimant medical treatment as her work-related condition may require. This decision was not appealed.

Subsequently, claimant's counsel submitted a petition to the administrative law judge seeking an attorney's fee of \$13,319, representing 51.5 hours of attorney time at \$250 per hour and 5.55 hours of paralegal time at \$80 per hour, as well as reimbursement for expenses of \$282.80. Employer responded that any fee award should be tailored to reflect claimant's limited degree of success in obtaining benefits, recognizing, however, the significance of the jurisdictional issue on which claimant prevailed. Employer therefore proposed an attorney's fee of approximately half of that requested.

The administrative law judge discussed the principles of *Hensley v. Eckerhart*, 461 U.S. 424 (1983), concerning a fee award in a case in which the claimant achieves only partial success. The administrative law judge first found that the hourly rate claimed for attorney work, \$250, was not excessive, but he disallowed 2.8 hours of attorney services and 2 hours of paralegal services. Finding the issues before him to be too interrelated to warrant severance for purposes of awarding a fee solely on the successful issues, the administrative law judge considered the amount of the fee request in view of the overall success obtained.

The administrative law judge found that claimant obtained an award of \$1,636.24 in temporary total disability compensation and \$368.49 for reimbursement of medical expenses. He found that her denied claim for temporary partial disability benefits was worth approximately \$10,500 from February 2003 through July 2004, when the administrative law judge issued his decision. The administrative law judge stated that

while “those bare numbers” support a fairly large reduction in the lodestar figure of \$12,459, the facts that claimant prevailed on the significant jurisdictional issue and obtained an award of ongoing medical benefits mitigate the lack of monetary success. The administrative law judge therefore found that only a 50 percent reduction in the lodestar figure is warranted and he awarded claimant’s counsel a fee of \$6,229.50, plus expenses of \$282.80, payable by employer.

Claimant appeals the reduction of her attorney’s fee request, contending that the administrative law judge misapplied *Hensley*. Specifically, claimant contends that the administrative law judge failed to give proper weight to her success on the jurisdictional issue, and that he also erred in reducing the lodestar figure. Employer responds, urging affirmance of the administrative law judge’s fee award.<sup>1</sup>

When, as here, the factfinder concludes that the successful and unsuccessful claims are interrelated, his inquiry into the amount of an appropriate fee concerns whether the success obtained is proportional to the efforts expended by counsel. *George Hyman Construction Co. v. Brooks*, 963 F.2d 1532, 1537, 25 BRBS 161, 167(CRT) (D.C. Cir. 1992). When a claimant obtains “excellent results, his attorney should recover a fully compensatory fee.” *Hensley*, 461 U.S. at 435. “When a party achieves ‘only partial or limited success,’ however, then compensation for all of the ‘hours reasonably expended on the litigation as a whole . . . may be an excessive amount.’” *Brooks*, 963 F.2d at 1535, 25 BRBS at 164(CRT), quoting *Hensley*, 461 U.S. at 436. *See also General Dynamics Corp. v. Horrigan*, 848 F.2d 321, 21 BRBS 73(CRT) (1<sup>st</sup> Cir.), *cert. denied*, 488 U.S. 992 (1988). The factfinder is in the best position of observing the factors affecting the amount of an attorney’s fee award. *Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3<sup>d</sup> Cir. 2001). In addition, the regulation at 20 C.F.R. §702.132(a) states that the amount of benefits awarded is a factor relevant to the amount of the fee award.

We have carefully considered claimant’s contentions of error and conclude that the administrative law judge’s fee award must be affirmed. The administrative law judge’s recitation of the *Hensley* principles is legally sound, *see, e.g., Horrigan*, 848 F.2d 321, 21 BRBS 73(CRT), and the Board is not free to substitute its judgment for that of the administrative law judge concerning the amount of an appropriate fee in light of

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<sup>1</sup> We decline to consider claimant’s contentions and exhibits concerning the issues surrounding claimant’s entitlement to specific medical treatment that arose after the administrative law judge issued his Decision and Order. As employer correctly contends, this matter is pending before the district director and is not properly before the Board in the context of claimant’s appeal of the administrative law judge’s attorney’s fee award. 20 C.F.R. §802.301(b).

claimant's degree of success. *Barbera*, 245 F.3d at 289, 35 BRBS at 27(CRT); *see also Berezin v. Cascade General, Inc.*, 34 BRBS 163 (2000); *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999); *Hill v. Avondale Industries, Inc.*, 32 BRBS 186 (1998), *aff'd sub nom. Hill v. Director, OWCP*, 195 F.3d 790, 33 BRBS 184(CRT) (5<sup>th</sup> Cir. 1999), *cert. denied*, 120 S.Ct. 2215 (2000). The administrative law judge is afforded discretion in setting the amount of an appropriate fee, *see Hensley*, 461 U.S. at 437; *Horrigan*, 848 F.2d at 326, 21 BRBS at 81-82(CRT), and as claimant has not established that the administrative law judge's reduction of his fee request is contrary to law or an abuse of discretion, we reject claimant's contention of error in this regard.

Similarly, we reject claimant's contention that the administrative law judge erred in reducing several itemized entries. The administrative law judge gave a full and rational explanation for his conclusions, Supp. Decision and Order at 5-7, and the reductions therefore are affirmed. *Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10<sup>th</sup> Cir. 1997); 20 C.F.R. §702.132.

Accordingly, the administrative law judge's Supplemental Decision and Order awarding an attorney's fee is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge