

J.W.)	
(Deceased) ¹)	
Claimant-Petitioner)	
v.)	
COOPER/T. SMITH STEVEDORING)	DATE ISSUED: 12/17/2007
COMPANY)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Order on Petition for Attorney's Fee of Daniel A. Sarno, Jr.,
Administrative Law Judge, United States Department of Labor.

Matthew H. Kraft (Rutter Mills, L.L.P.), Norfolk, Virginia, for claimant.

Donna White Kearney (Taylor & Walker, P.C.), Norfolk, Virginia, for self-
insured employer.

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

PER CURIAM:

Claimant appeals the Order on Petition for Attorney's Fee (2000-LHC-2487) of
Administrative Law Judge Daniel A. Sarno, 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). An attorney's fee determination 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).

¹ Employer has advised the Board of claimant's death on October 8, 2003.

Claimant, who sustained a work-related injury on October 25, 1998, was awarded temporary total disability benefits in an Order on Stipulations issued by Administrative Law Judge Fletcher E. Campbell, Jr., on January 7, 2000. In a subsequent Decision and Order issued on July 19, 2001, Administrative Law Judge Campbell found employer liable for an assessment pursuant to Section 14(f) of the Act, 33 U.S.C. §914(f), and ordered claimant's attorney to submit a fully supported fee petition within thirty days of receipt of the Decision and Order. Decision and Order at 7. Rather than following the administrative law judge's instructions, claimant's attorney subsequently attempted to negotiate his fee directly with employer. As these attempts were ultimately unsuccessful, claimant's attorney, on April 27, 2006, filed a fee petition with the administrative law judge, requesting a fee of \$6,875.00 for services associated with the claim for a Section 14(f) assessment.² In an Order on Petition for Attorney's Fee issued on February 8, 2007, Administrative Law Judge Daniel A. Sarno, Jr. (the administrative law judge),³ having considered employer's objections to the fee petition and claimant's response thereto, denied the fee petition on the basis that it was untimely filed.

On appeal, claimant contends that the administrative law judge erred in denying the fee petition as untimely filed. Employer responds, urging affirmance.⁴

In this case, the administrative law judge acted within his discretion in denying the fee on the basis that counsel's petition was untimely filed. While neither the Act nor the regulations specifies a time period for filing a fee petition, *see* 33 U.S.C. §928; 20 C.F.R. §702.132; *Harmon v. Sea-Land Serv., Inc.*, 31 BRBS 45, 49 (1997), Section 702.132 of the Act's regulations states that the fee application "shall be filed . . . within the time

² The instant appeal deals only with the issue of claimant's attorney's entitlement to a fee payable by employer, for services associated with the Section 14(f) issue. Claimant's counsel has received payment of \$7,000.00 in attorney's fees previously awarded in the January 7, 2000 Order on Stipulations. *See* Emp. Resp. Br. – EX 5; Order on Stipulations at 3.

³ The attorney's fee matter was referred to Administrative Law Judge Sarno as a result of the retirement of Administrative Law Judge Campbell.

⁴ One of the arguments made by employer in support of affirmance of the administrative law judge's denial of a fee is that obtaining a Section 14(f) assessment does not entitle claimant's attorney to a fee payable by employer. *See* Emp. Resp. Br. at 7. This argument, however, has been expressly rejected by the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction the instant case arises. *Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4th Cir. 2004).

limits specified by . . . [the] administrative law judge . . .” Moreover, an administrative law judge’s determination to reject a fee petition that was not filed within the time limit specified by the administrative law judge is subject to review only for an abuse of discretion. *See Bankes v. Director, OWCP*, 7 BLR 1-102 (1984), *aff’d*, 765 F.2d 81 (6th Cir. 1985).

In the case at bar, the administrative law judge correctly found, first, that the fee petition was not filed within the 30-day time limit specified by Administrative Law Judge Campbell in his Decision and Order issued on July 19, 2001. Order on Petition for Attorney’s Fee at 2. He then considered the particular circumstances involved in claimant’s counsel pursuit of an attorney’s fee, including the negotiations between various members of claimant’s counsel’s law firm and employer’s attorney regarding the possible settlement of the attorney’s fee. *Id.* The administrative law judge determined that although it would be reasonable to allow the parties a certain amount of time for settlement negotiations, the length of time involved in this case was excessive. *Id.* He concluded that claimant’s attorney’s fee petition, which was not filed with the administrative law judge until nearly five years after the specifically allotted time, was “unconscionably late” and, accordingly, he denied the fee petition. *Id.*

The contentions raised by claimant on appeal do not demonstrate an abuse of discretion by the administrative law judge in his refusal to consider the untimely filed fee petition. *See generally Sharpe v. Director, OWCP*, 495 F.3d 125, 130 (4th Cir. 2007). The administrative law judge appropriately considered the applicable regulation as well as the relevant facts surrounding the filing of claimant’s attorney’s fee petition, and rationally exercised his discretion in denying the fee petition as untimely filed. *Id.*; *Bankes*, 7 BLR 1-102, *aff’d*, 765 F.2d 81; *Bradley v. Director, OWCP*, 8 BLR 1-418 (1985). The Board has recognized, in this regard, that adherence to time limits specified for filing fee petitions serves the interest of administrative efficiency and finality.⁵ *See Bankes*, 7 BLR at 1-105; *Bradley*, 8 BLR at 1-420; 20 C.F.R. §725.366. In the instant case, the administrative law judge was well within his discretion in refusing to consider claimant’s counsel’s fee petition which was not filed with the administrative law judge until nearly five years after the specified filing deadline. *Id.*

⁵ In a different context, the Board has identified the policy against protracted litigation to be a relevant consideration in its review of an administrative law judge’s discretionary determination. *See Harrison v. Barrett Smith, Inc.*, 24 BRBS 257, 260-61 (1991), *aff’d mem. sub nom. Harrison v. Rogers*, 990 F.2d 1377 (D.C. Cir. 1993). We therefore agree with employer that claimant’s contention that employer has not been prejudiced by the delayed filing of the fee petition is unavailing; employer is entitled to expect that it will not face attorney’s fee proceedings an unknown number of years after expiration of the deadline imposed for the filing of claimant’s attorney’s fee petition.

Accordingly, the administrative law judge's Order on Petition for Attorney's Fee is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge