

BRB No. 01-0456

SAUILEMAU UELIGITONE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CARPENTER RIGGING AND)	DATE ISSUED: <u>Feb. 5, 2002</u>
SUPPLY COMPANY)	
)	
and)	
)	
REPUBLIC INDEMNITY/SUNRISE)	
CONSULTING)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Compensation Order Approval of Attorney Fee Application and the Denial of Motion for Reconsideration of Compensation Order Approval of Attorney Fee Application of Philip G. Williams, District Director, United States Department of Labor.

Steven M. Birnbaum (Law Offices of Steven M. Birnbaum), San Francisco, California, for claimant.

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

PER CURIAM:

Claimant appeals the Compensation Order Approval of Attorney Fee Application and the Denial of Motion for Reconsideration of Compensation Order Approval of Attorney Fee Application (13-98178) of District Director Philip G. Williams 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, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant was awarded compensation under the Act as a result of an injury that he sustained to his left ankle during the course of his employment with employer on September 2, 1998. Claimant's counsel filed a fee petition with the district director seeking an

attorney's fee of \$2,816.75, representing 9.5 hours of services rendered by lead counsel at \$245 per hour, three-quarters of an hour of services rendered at \$165 per hour, and 4.3 hours of law clerk services rendered at \$85 per hour. Employer responded to counsel's fee petition, contending that while it was liable for a fee, lead counsel's requested hourly rate should be reduced to \$200. In his Compensation Order, the district director reduced the hourly rate sought by claimant's lead counsel to \$215 per hour, approved all of the hours requested, and consequently awarded counsel a fee of \$2,531.75. On reconsideration, the district director reiterated the factors he considered in making his decision and found no basis to change his original award.

Claimant now appeals, challenging the district director's reduction in the hourly rate sought by lead counsel. Employer has not responded to this appeal.

An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, Section 702.132, 20 C.F.R. §702.132, which provides that any attorney's 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. *See generally Healy Tibbits Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT)(9th Cir.), *cert. denied*, 121 S.Ct. 378 (2000); *Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). After a thorough review of claimant's contentions on appeal, we conclude that the district director's fee award must be upheld, as claimant has failed to show the award to be unreasonable or an abuse of the district director's discretion.

Claimant initially contends that the district director erred in reducing the hourly rate requested by lead counsel because employer failed to provide evidence that the requested hourly rate was unreasonable. Moreover, claimant contends that the district director's reduction in the hourly rate sought by his lead counsel is unreasonable given counsel's expertise and the geographic area in which the claim arose, and that the hourly rate of \$215 awarded to his lead attorney is so low as to drive competent counsel from the field.

In considering counsel's fee petition, the district director acknowledged that employer objected to the hourly rate requested by claimant's lead counsel. Thereafter, the district director specifically took into consideration the factors contained in the regulation found at 20 C.F.R. §702.132, and determined that the hourly rate of \$245 sought by claimant's lead counsel was excessive, considering the lack of complexity of the issues and the amount of benefits gained in the instant case. Accordingly, the district director awarded claimant's lead counsel a fee based on an hourly rate of \$215.¹ As the district director specifically took into

¹The district director additionally stated that he considered the quality of

account the relevant factors which should be considered when awarding a fee, we affirm the hourly rate determination of \$215 for the fee awarded to claimant's lead counsel by the district director, as claimant has not shown that the district director abused his discretion in this regard. *See Thompson v. Lockheed Shipbuilding & Constr. Co.*, 21 BRBS 94 (1988); *see also Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

Accordingly, the Compensation Order Approval of Attorney Fee Application and the Denial of Motion for Reconsideration of Compensation Order Approval of Attorney Fee Application are affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

representation and the cost of doing business in the San Francisco Bay Area when addressing this issue.