

HAROLD ODDEN)
)
 Claimant-Petitioner)
)
 v.)
)
 LOUIS DREYFUS CORPORATION) DATE ISSUED: 01/30/2006
)
 and)
)
 CRAWFORD & COMPANY)
)
 Employer/Carrier-)
 Petitioner) DECISION and ORDER

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

Charles Robinowitz, Portland, Oregon, for claimant.

Karen O’Kasey (Hoffman Hart Wagner), Portland, Oregon, for employer/
carrier.

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

PER CURIAM:

Claimant appeals the Compensation Order Approval of Attorney Fee (Case No. 14-126578) 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 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 Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sustained work-related injuries to his neck and left arm and shoulder in an incident at work on October 1, 1997, for which Administrative Law Judge Jennifer Gee found him entitled to permanent partial disability benefits under the schedule for a

five percent arm impairment and a *de minimis* award for the period from August 10, 1999, through April 4, 2002. Judge Gee subsequently awarded claimant's counsel \$13,178.85 in attorney's fees and costs. Additionally, the district director awarded counsel a fee of \$3,627.26. Both parties appealed the decisions of Judge Gee and the district director. In its decision issued June 13, 2005, the Board affirmed Judge Gee's award of permanent partial disability benefits but vacated the *de minimis* award and remanded the case for further consideration of that issue. *Odden v. Louis Dreyfus Corp.*, BRB Nos. 04-0722/A, 04-0904 (June 13, 2005) (unpub.), *aff'd on recon.*, (Jan. 13, 2006). The Board also affirmed Judge Gee's award of an attorney's fee, but modified the district director's attorney's fee award to reflect an hourly rate of \$225, rather than \$210. *Id.*

Claimant's counsel subsequently sought an additional attorney's fee before the district director totaling \$950, representing 3 hours of attorney work at an hourly rate of \$275, plus 1.25 hours of paralegal work at \$100 per hour for work performed in obtaining compensation already awarded claimant in this case. In her Compensation Order dated March 2, 2005, the district director awarded claimant's counsel an attorney's fee of \$492.50, representing 1.75 hours of attorney time at \$210 per hour plus 1.25 hours of legal assistant time at the hourly rate of \$100.

On appeal, claimant challenges the district director's reduction in the hourly rate awarded for attorney services. Specifically, he asserts that the district director does not have the legal authority to reduce an attorney's established market rate, and alternatively contends that the district director did not follow the correct procedure for determining what the prevailing market rate is in the relevant region. Employer responds, urging affirmance.

It is well established that adjudication officers under the Act have the authority to award an attorney's fee for work performed at their respective levels of the claims process. *See* 33 U.S.C. §928; 20 C.F.R. §702.132(a); *see generally Stratton v. Weedon Engineering Co.*, 35 BRBS 1 (2001) (*en banc*); *Smith v. Alter Barge Line, Inc.*, 30 BRBS 87, 89 (1996); *Fitzgerald v. RCA International Service Corp.*, 15 BRBS 345 (1983). As such, the district director necessarily has, in contrast to claimant's position, the authority to make a determination regarding the hourly rate awarded to counsel for the work performed before her in the relevant geographic area. *Newport News Shipbuilding & Dry Dock Co v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4th Cir. 2004). Nevertheless, for the reasons stated in our prior decision in this case, *see Odden*, slip op. at 7, we cannot affirm the district director's reduction of the requested hourly rate to \$210.

As the Board previously observed, in stating that "[i]t is customary to award a lower hourly rate for work performed before this office since no litigation occurs," Compensation Order at 2, the district director improperly distinguished between trial and non-trial work. *See Gulley v. Ingalls Shipbuilding, Inc.*, 22 BRBS 262 (1989); *Kauffman*

v. Brady-Hamilton Stevedore Co., 12 BRBS 544, 545 (1980). Moreover, we reject claimant’s assertion that pursuant to *Blum v. Stenson*, 465 U.S. 886 (1984), wherein the United States Supreme Court held that neither complexity nor novelty of the issues “is an appropriate factor in determining whether to *increase* the basic fee award,” *id.* at 898-899 (emphasis added), a requested hourly rate cannot be reduced due to the lack of complexity of a case as the converse of a proposition is not always true. *See Odden*, BRB Nos. 04-0722/A, 04-0904 (Jan. 13, 2006) (Order on Recon.) (unpub.). Furthermore, the pertinent regulation, 20 C.F.R. §702.132(a), explicitly identifies “the complexity of the legal issues involved” as a relevant factor in setting a fee award and thus it does not impede the district director from reducing the hourly rate to account for this factor. Consequently, as the district director rationally rejected a rate of \$275 and erred in awarding a rate of \$210 based on the nature of the services provided, we modify the district director’s fee award to reflect an hourly rate of \$225.¹ *See Odden*, slip. Op. at 7.

Accordingly, the district director’s award of an attorney’s fee is modified to reflect an hourly rate of \$225. In all other regards, her Compensation Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

¹ This results in an award of attorney’s fees of \$518.75.