

BRB No. 02-0777

DAVID F. KENNY)	
Claimant-Petitioner)	
v.)	
CASHMAN/KPA)	DATE ISSUED: 07/10/2003
and)	
NATIONAL UNION FIRE INSURANCE)	
Employer/Carrier- Respondents)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney Fees of Marcia Finn, District Director, United States Department of Labor.

David J. Berg (Latti & Anderson, L.L.P.), Boston, Massachusetts, for claimant.

Michael P. Sams (Sherin & Lodgen, L.L.P.), Boston, Massachusetts, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Compensation Order Award of Attorney Fees (OWCP No. 1-143775) of District Director Marcia Finn 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 the law. *See, e.g., Tait v. Ingalls Shipbuilding, Inc.*, 24 BRBS 59 (1990); *Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986); *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant was injured during the course of his employment with employer.

Administrative Law Judge Jansen awarded claimant temporary total disability and medical benefits in a decision issued on December 7, 1999. Subsequently, claimant filed a motion for modification based upon a change of condition, seeking permanent total, or in the alternative permanent partial, disability benefits. Following a hearing and review of the evidence, Administrative Law Judge Sutton awarded claimant permanent total disability and medical benefits. Thereafter, claimant's counsel filed a petition for an attorney's fee with both the district director and Judge Sutton for work performed on claimant's behalf in the motion for modification. Only the district director's fee is at issue before us.

Counsel filed a fee petition with the district director for work performed between December 26, 2000, and February 20, 2001, requesting a total fee in the amount of \$1,060, representing 5.3 hours of services at an hourly rate of \$200. Counsel cited a number of recent cases wherein the Board affirmed an administrative law judge's awarded hourly rate of \$200 as support for his requested hourly rate. Employer objected to the hourly rate only. In her compensation order, the district director stated that she considered the complexity of the case, the issues involved, the results obtained, the necessary work performed, the expertise of the attorney, and other factors in making her decision. She then reduced the hourly rate to \$175, stating that anything in excess of \$175 per hour "seems excessive for the type of legal services provided in this geographical area[.]" and she awarded counsel a fee of \$927.50. Claimant's counsel appeals the fee award, and employer responds, urging affirmance.

Counsel contends the district director abused her discretion in reducing the hourly rate. Claimant's argument is without merit. Although he states he does not have a defined hourly rate *per se*, as most of his legal work is performed on a contingency basis, he believes a review of recent Board law establishes that \$200 per hour is a reasonable rate for the Boston area. Specifically, claimant's counsel argues that the Board has affirmed awards of hourly rates of \$200 in Savannah, Charleston, and New Orleans and that the hourly rate in Boston, a larger metropolitan area with a higher cost of living than either Savannah or Charleston, should be at least equal. *See, e.g., Bazor v. Boomtown Belle Casino*, 35 BRBS 121 (2001), *rev'd on other grounds*, 313 F.3d 300, 36 BRBS 79(CRT) (5th Cir. 2002); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000); *Moore v. Universal Maritime Corp.*, 33 BRBS 54 (1999); *Hargrove v. Strachan Shipping Co.*, 32 BRBS 224 (1998); *McKnight v. Carolina Shipping Co.*, 32 BRBS 165, *aff'd on recon. en banc*, 32 BRBS 251 (1998). We are not persuaded by claimant's counsel that the district director has committed any error in awarding a fee based on an hourly rate of \$175.

A fee award, including the hourly rate, must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132, which provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work performed and shall take into account the quality of the representation, the

complexity of the issues, and the amount of benefits awarded. *See generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). The district director considered the appropriate regulatory factors in rendering her fee award, and she determined that an hourly rate greater than \$175 was not warranted for the type of legal services provided in this case in the Boston area. Moreover, as counsel conceded that the work before the district director was straightforward and was neither unduly complex nor unduly simple[,] Clt's brief at 3, the district director's conclusion is reasonable. *See, e.g., Watkins v. Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *aff'd mem.*, 12 F.3d 209 (5th Cir. 1993).

Accordingly, the district director's fee award is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge