BRB No. 05-0869

| | | |
|---|---|---|
| DANIEL GALLEGOS | ) | |
| | ) | |
| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| DADE TRAILER & CONTAINER REPAIR | ) | DATE ISSUED: 07/11/2006 |
| | ) | |
| and | ) | |
| | ) | |
| ASSOCIATED INDUSTRIES INSURANCE COMPANY, INCORPORATED | ) | |
| | ) | |
| Employer/Carrier-Respondents | ) | DECISION and ORDER |

Appeal of the Compensation Order Settlement – Section 8(i) of Charles D. Lee, District Director, United States Department of Labor.

Clifford R. Mermell (Gillis, Mermell & Pacheco, P.A.), Miami, Florida, for claimant.

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

PER CURIAM:

Claimant appeals the Compensation Order Settlement – Section 8(i) (Case No. 06-189789) of District Director Charles D. Lee 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., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant injured his knee on October 2, 2002, while repairing a container. Surgery was performed on September 8, 2003. Claimant was released for work with restrictions on June 23, 2004. Subsequently, the parties submitted a settlement agreement to the district director for approval under Section 8(i), 33 U.S.C. §908(i), in which

claimant was to receive a lump sum payment of $16,698.92 for medical benefits and $66,795.74 in compensation benefits, of which $23,494.66 represented a fee for claimant's counsel. Thus, claimant was to receive the net sum of $60,000, for compensation and medicals. In his Compensation Order, the district director approved the settlement in respect to claimant's compensation and medical benefits but rejected the agreement as to the amount of the attorney's fee. He reduced the number of hours requested, as well as the hourly rate, and awarded claimant's counsel an attorney's fee of $14,530. Thus, the district director stated that claimant netted $68,964.66 as a result of the settlement.

Claimant's counsel appeals, arguing that the district director erred in reducing the amount of the attorney's fee that employer agreed to pay. Employer has not responded to this appeal.

In his fee petition, claimant's counsel requested a fee of $23,494.66, representing 112.55 hours of legal services at $250 per hour plus $994.66 in expenses. The district director reduced the hourly rate to $200 and the approved hours to 72.65 and awarded a fee of $14,530.00. Although the parties agreed to employer's liability for an attorney's fee of $23,494.66, the district director must approve the fee request in accordance with the provisions of Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, 20 C.F.R. §702.132. *Eaddy v. R. C. Herd & Co.*, 13 BRBS 455 (1981). The district director generally should approve the parties' agreement as to the amount of the fee unless he finds it to be clearly excessive. *Ballard v. General Dynamics Corp.*, 12 BRBS 966 (1980).

Claimant contends that the district director erred in reducing his hourly rate. Based on the quality of the representation, the work performed, the complexity of the case, the benefits awarded and the risk of loss, the district director reduced the $250 hourly rate requested by counsel to $200 per hour. Order at 7. As the district director addressed the appropriate hourly rate in terms of the regulatory criteria, 20 C.F.R. §702.132, we cannot say that the district director abused his discretion in this regard. Thus, we affirm the hourly rate awarded to counsel by the district director. *See Moyer v. Director, OWCP*, 124 F.3d 1378, 31 BRBS 134(CRT) (10th Cir. 1997); *Finnegan v. Director, OWCP*, 69 F.3d 1039, 29 BRBS 121(CRT) (9th Cir. 1995).

Claimant also challenges the district director's approval of only 72.65 hours of services out of the 112.55 hours requested. Claimant contends that the district director erred by not specifically addressing the reason for each of his reductions. We agree that the district director's award cannot be affirmed.

After stating that "the time claimed for various activities are (sic) excessive and/or unnecessary as some of the described work was not required to establish entitlement to

benefits and some were clearly clerical in nature," Order at 2, the district director listed the individual dates of services that he either reduced or disallowed. *Id.* at 2-7. The district director, however, did not provide the basis for each finding and thus did not state whether specific reductions or disallowances were excessive, unnecessary or clerical. The failure to state the rationale for each reduction prevents the Board's review to determine if the reductions were rational or constituted an abuse of discretion. *See, e.g., Steevens v. Umpqua River Navigation,* 35 BRBS 129 (2001); *Jensen v. Weeks Marine,* 33 BRBS 97 (1999); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990). Therefore, we must vacate the fee award and remand the case for the district director to discuss more specifically the basis for any reductions in the fee request. *Ballard,* 12 BRBS 966.

Accordingly, the district director's attorney's fee award is vacated, and the case is remanded for further findings consistent with this decision. In all other respects, the district director's Compensation Order Settlement – Section 8(i) is affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge