

JERALD K. GOFF)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	DATE ISSUED:_____
)	
and)	
)	
TRAVELERS INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney’s Fees of Jeana F. Jackson, District Director, United States Department of Labor.

Robin Reid Boswell (Nelson & Boswell, P.A.), Pascagoula, Mississippi, for claimant.

Traci M. Castille (Franke, Rainey & Salloum, P.L.L.C.), Gulfport, Mississippi, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Compensation Order Award of Attorney’s Fees (OWCP No. 6-96430) of District Director Jeana F. Jackson 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. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984); *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant requested authorization for hearing aids from employer on March 19, 1998,

and repeatedly sought a change in treating physician to Dr. Gacek. In response, employer denied claimant's numerous requests for a change in physician, offered to settle the claim, and in August 1998, allegedly gave initial authorization for claimant to purchase the hearing aids subject to his submission of an estimate. Claimant underwent a hearing aid cost analysis and assessment with Dr. Stanfield on September 23, 1998, and employer authorized claimant to purchase the hearing aids in a letter dated October 12, 1998.

Claimant's counsel requested a fee for five hours of services rendered on claimant's behalf between March 18, 1998, and November 30, 1998, at an hourly rate of \$175, plus \$6 in expenses, for a total fee of \$881. Employer objected, arguing that it should not be liable for an attorney's fee for services performed after August 21, 1998, asserting on that date it authorized the purchase of the hearing aids, or for any time spent in claimant's failed attempt to change his treating physician. The district director reduced the hourly rate to \$100, and disallowed all of the time requested, 1.375 hours, for work performed after August 21, 1998.

Accordingly, the district director awarded a fee of \$362.50, representing 3.625 hours at an hourly rate of \$100, payable by employer.

On appeal, claimant contends that employer did not actually authorize payment until October 12, 1998, as it required claimant to undergo an additional evaluation prior to final authorization on that date. Counsel asserts that services from August 27, 1998, to October 5, 1998, are related to obtaining this approval and services thereafter are related to review of employer's letter and advising claimant. Counsel's contentions have merit.

In the instant case, the district director did not make a specific finding as to when employer finalized payment for claimant's hearing aids.¹ A review of the limited record before the Board indicates two potential dates for authorization, either August 21, 1998, when employer gave initial authorization, or October 12, 1998, when after claimant submitted the requested information, employer gave final approval. As it is not clear that this claim was fully resolved by August 21, 1998, we must remand this case for further findings. *Tait v. Ingalls Shipbuilding, Inc.*, 24 BRBS 59 (1990).

¹In fact, the district director's form order states only that "[t]he employer's counsel has made several specific objections to the number of hours submitted. To the extent that the undersigned disallows any time requested, the objections are sustained. Otherwise the objections are rejected and the hours requested are found to be reasonable." A list of dates and time disallowed follows. Compensation Order Award of Attorney's Fees at 1.

Moreover, even if employer authorized payment on August 21, 1998, that date does not automatically cut off a fee for services performed thereafter. In *Everett v. Ingalls Shipbuilding, Inc.*, 32 BRBS 279 (1998), *aff'd on recon. en banc*, 33 BRBS 38 (1999), the Board vacated the district director's denial of all fees for services performed after the date employer paid benefits, as the district director rejected all services on the ground that no further benefits were obtained without first considering the necessity and reasonableness of time requested as it may relate to services to "wind-up" the case. *See also Nelson v. Stevedoring Services of America*, 29 BRBS 90 (1995). On remand, the Board instructed the district director to provide an adequate discussion of this time and assess the necessity and reasonableness of the work as counsel is entitled to a fee for reasonable "wind-up" services payable by employer.² *See Everett*, 32 BRBS at 280. Thus, on remand in the instant case,

²Employer argues that in light of the decision by the United States Court of Appeals for the Fifth Circuit in *Wilkerson v. Ingalls Shipbuilding, Inc.*, 125 F.3d 904, 31 BRBS 150 (CRT) (5th Cir. 1997), it cannot be liable for an attorney's fee assessed for "wrap-up" time once it has paid benefits. In *Wilkerson*, employer began paying claimant compensation, but claimant thereafter continued to pursue his claim before an administrative law judge seeking additional benefits, prejudgment interest, a Section 14(e) penalty, 33 U.S.C. §914(e), and an attorney's fee. The Fifth Circuit held that claimant was not entitled to any additional compensation, or to interest and a Section 14(e) assessment, and thus concluded that claimant's counsel is not entitled to recover an attorney's fee for the work performed in

after the district director determines the date when full payment to claimant occurred, she must then consider the necessity and reasonableness of any time requested for an attorney's fee subsequent to that date as it may relate to any services performed to "wind-up" this case.³
Id.

pursuing claimant's unsuccessful claim. *Wilkerson*, 125 F.3d at 908, 31 BRBS at 153 (CRT). In contrast to *Wilkerson*, claimant in the instant case successfully obtained additional compensation, *i.e.*, costs associated with his hearing aids, thereby entitling counsel to an attorney's fee.

³For instance, even if authorization was provided by employer as early as August 21, 1998, it appears as though at least some of the time expended by claimant's counsel subsequent to that date, *e.g.*, review of the hearing aid estimate and transmission of said estimate to employer, as well as time spent reviewing employer's subsequent authorization and advising claimant of said authorization, may qualify as compensable "wind-up" services.

Accordingly, the district director's award of an attorney's fee is vacated, and the case remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge