

JOHN JANICH)	
)	
Claimant-Respondent)	
)	
v.)	
)	
AMERICAN GRAIN TRIMMERS)	DATE ISSUED: <u>JUN 14, 2004</u>
)	
and)	
)	
FRANK GATES ACCLAIM)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Granting Attorney Fees and the Order Denying Motion for Reconsideration of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Scott Sands (Sands & Associates), Chicago, Illinois, for claimant.

Gregory P. Sujack (Garofalo, Schreiber, Hart & Storm, Chartered), Chicago, Illinois, for employer/carrier.

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

PER CURIAM:

Employer appeals the Supplemental Decision and Order Granting Attorney Fees and the Order Denying Motion for Reconsideration (2002-LHC-0239) of Administrative Law Judge Daniel J. Roketenetz 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).

On May 2, 1995, claimant sustained a work-related injury when he fell approximately ten feet onto the steel deck of a grain ship. Claimant has undergone two back surgeries. Employer voluntarily paid claimant temporary total disability benefits from May 3, 1995 to August 1, 1995, based on an average weekly wage of \$795.51. Claimant returned to his regular employment intermittently from August 1, 1995, to December 19, 1996, but has not worked since then.

In his Decision and Order –Award of Benefits, the administrative law judge awarded claimant temporary total disability benefits from April 11, 2000, through December 26, 2000, and ongoing from May 22, 2001. 33 U.S.C. §908(b). Additionally, the administrative law judge awarded claimant payment for an unpaid medical bill, and he assessed against employer a penalty under Section 14(e) of the Act, 33 U.S.C. §914(e), on disability benefits due from May 3, 1995 until June 6, 1995.¹ The administrative law judge stated that claimant’s counsel had 30 days in which to file a petition for an attorney’s fee and that employer had 10 days following receipt of the petition in which to file objections.

Claimant’s counsel filed a petition for an attorney’s fee for work performed before the administrative law judge in the amount of \$50,538.34. In a Supplemental Decision and Order Granting Attorney Fees, the administrative law judge, after stating that employer had not filed any objections to the fee petition, and finding that the claim was referred to the Office of Administrative Law Judges on November 15, 2001, awarded counsel a fee of \$31,391.34, representing 106.65 hours of attorney services rendered at an hourly rate of \$250, 22 hours of paralegal services rendered at an hourly rate of \$60, and \$3,408.84 in expenses.²

Upon its receipt of the administrative law judge’s Supplemental Decision and Order, employer moved for reconsideration of the fee awarded to claimant’s counsel. With its motion for reconsideration, employer submitted specific objections to claimant’s counsel’s fee request. The administrative law judge subsequently issued an Order instructing claimant to show cause as to why employer’s motion for reconsideration

¹ The administrative law judge subsequently denied that portion of employer’s motion for reconsideration which challenged claimant’s award of benefits. The administrative law judge vacated his denial of employer’s claim for relief pursuant to Section 8(f) of the Act, 33 U.S.C. §908(f), on the ground that claimant’s disability is temporary.

² The administrative law judge disallowed services performed before the case was referred to the Office of Administrative Law Judges.

should not be granted. Claimant's response to this Order addressed the specific objections raised by employer in its motion for reconsideration. In an Order Denying Motion for Reconsideration, the administrative law judge, having reviewed both employer's motion and claimant's response, found that employer's objections lacked merit, and he accordingly denied employer's motion for reconsideration.

Employer appeals the fee award, arguing that the administrative law judge erred by failing to specifically address its objections to claimant's counsel's fee petition. Claimant responds, urging affirmance.

We hold that employer has not demonstrated an abuse of the administrative law judge's discretion in awarding claimant's counsel an attorney's fee of over \$31,000 in this case. In its motion for reconsideration of the administrative law judge's fee award, employer contended, *inter alia*, that counsel's hourly rate should not exceed "between \$175 and \$195," that counsel's use of .3 of an hour minimum billing should be disallowed, and that the time requested for certain itemized entries is excessive. In his Order Denying Motion for Reconsideration of the attorney's fee award, the administrative law judge specifically found that employer's objections lack merit and that the fee counsel requested is reasonable. Employer's assertions on appeal are insufficient to meet its burden of proving that the administrative law judge abused his discretion when he considered the objections raised by employer on reconsideration and overruled them based on claimant's response thereto. *See Pozos v. Army & Air Force Exchange Serv.*, 31 BRBS 173 (1997). The administrative law judge also found the fee to be reasonable for the work performed before him. *See generally Finnegan v. Director, OWCP*, 69 F.3d 1039, 29 BRBS 121(CRT) (9th Cir. 1995). Thus, we decline to reduce or disallow the number of hours or the hourly rate awarded by the administrative law judge. *See generally Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001) (administrative law judge is in the best position to ascertain reasonableness of fee request); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

Accordingly, we affirm the administrative law judge's Supplemental Decision and Order Granting Attorney Fees and the Order Denying Motion for Reconsideration.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge