

B.C.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
STEVEDORING SERVICES OF AMERICA	)	DATE ISSUED: 05/28/2008
	)	
and	)	
	)	
HOMEPORT INSURANCE COMPANY	)	
	)	
Employer/Carrier- Respondents	)	ORDER on MOTION for RECONSIDERATION

Claimant has filed a timely motion for reconsideration of the Board’s Decision and Order in this case, *B. C. v. Stevedoring Services of America*, 41 BRBS 107 (2007). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407(a). In addition, claimant has filed a petition seeking an attorney’s fee for work performed before the Board. Employer responds, urging denial of claimant’s motion for reconsideration; employer also has filed a response to claimant’s request for a fee for work performed before the Board.

We need not recount the full procedural history of this case as the sole issue presented by claimant’s motion for reconsideration relates to the administrative law judge’s reduction in the hourly rate requested by claimant’s attorney for services performed before the administrative law judge in 2006 from \$350 to \$250. *See* Supplemental Order on Remand Awarding Attorney Fee at 3-5. On appeal to the Board, claimant argued that the administrative law judge erred in finding that the documentation submitted by counsel in support of his requested rate was insufficient to establish that \$350 is a reasonable rate for the work performed in this case. The Board disagreed, holding that the administrative law judge rationally determined that the documentation submitted by claimant’s attorney was insufficient to support counsel’s assertion that the requested hourly rate of \$350 is consistent with the prevailing community rate. *B.C.*, 41 BRBS at 112-113.

In his motion for reconsideration, claimant contends that the administrative law judge erroneously rejected every indicia submitted by counsel of prevailing market rates for similar services performed by comparable attorneys in the community. In support of his motion for reconsideration, claimant has submitted the affidavit of Attorney William B. Crow, a Portland, Oregon, attorney with expertise on the issue of attorney's fees, (Crow Affidavit) as additional documentation that his requested rate is in line with prevailing market rates for comparable Portland area attorneys performing comparable work.<sup>1</sup> It is the administrative law judge's province to determine in the first instance the weight to accord this new information provided by claimant in support of his requested hourly rate for work before the administrative law judge. We therefore grant claimant's motion for reconsideration and remand the case for the administrative law judge to determine whether the Crow Affidavit warrants further consideration of the hourly rate awarded to claimant's attorney for services performed before the administrative law judge in 2006.

As this case is being remanded and the degree of success which claimant will ultimately achieve with respect to his appeal of the administrative law judge's attorney's fee award is yet to be determined, we deny claimant's request for a fee for work performed before the Board at this time. Claimant may refile his attorney's fee petition with the Board after the administrative law judge issues a decision on remand. 20 C.F.R. §802.203(c).

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<sup>1</sup> Claimant also has submitted the Crow Affidavit in support of his petition for an attorney's fee for work performed before the Board. In its Response to Claimant's Application for Attorney Fees, employer challenges the bases for Attorney Crow's conclusion that \$350 to \$400 is a reasonable market rate for claimant's counsel's work in longshore cases, and supports its arguments with a deposition of Attorney Crow taken in another case.

Accordingly, claimant's motion for reconsideration is granted, and the case is remanded to the administrative law judge for further consideration consistent with this Order. Claimant's petition for an attorney's fee before the Board is denied at this time.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge