

JESUS AZUA)
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 Claimant-Petitioner)
)
 v.)
) DATE ISSUED: May 12, 2014
 NASSCO, INCORPORATED)
)
 Self-Insured)
 Employer-Respondent) DECISION and ORDER

Appeal of the Order Concerning Attorney's Fees and the Order Denying Motion for Reconsideration of Order Concerning Attorney's Fees of Russell D. Pulver, Administrative Law Judge, United States Department of Labor.

Eric A. Dupree and Paul R. Myers (Dupree Law, APLC), Coronado, California, for claimant.

Roy D. Axelrod (Law Office of Roy Axelrod), Solana Beach, California, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Order Concerning Attorney's Fees and the Order Denying Motion for Reconsideration of Order Concerning Attorney's Fees (2011-LHC-0173) of Administrative Law Judge Russell D. Pulver 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 may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Following the administrative law judge's approval of the parties' stipulations regarding claimant's entitlement to benefits under the Act, claimant's counsel filed a fee petition with the administrative law judge for work performed before the Office of

Administrative Law Judges between April 2008 and March 2012. Specifically, counsel sought a fee of \$77,041.37, representing 61.5 hours of attorney services by Eric Dupree at an hourly rate of \$500, 99.1 hours of attorney services by Paul Myers at an hourly rate of \$300, and 51.8 hours of paralegal services at an hourly rate of \$150, plus costs of \$8,791.37. Employer filed objections to the fee petition.

In his order awarding an attorney's fee, the administrative law judge reduced the hourly rates to \$388 for Mr. Dupree and to \$225 for Mr. Myers, approved an hourly rate of \$150 for paralegal services, and approved the number of hours requested by claimant's counsel. Therefore, the administrative law judge awarded claimant's counsel a fee totaling \$62,720.87. The administrative law judge summarily denied claimant's motion for reconsideration.

On appeal, claimant challenges the hourly rates allowed for his attorney's services. Employer responds, urging affirmance. Claimant has filed a reply brief.

The United States Supreme Court has held that an attorney's reasonable hourly rate is "to be calculated according to the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984); *see also Perdue v. Kenny A.*, 559 U.S. 542, 551 (2010). The United States Court of Appeals for the Ninth Circuit, within whose jurisdiction this case arises, has held that a "reasonable" hourly rate must reflect the rate: (1) that prevails in the "community" (2) for "similar" services (3) by an attorney of "reasonably comparable skill, experience, and reputation." *Christensen v. Stevedoring Services of America, Inc.*, 557 F.3d 1049, 1055, 43 BRBS 6, 8-9(CRT) (9th Cir. 2009); *Van Skike v. Director, OWCP*, 557 F.3d 1041, 43 BRBS 11(CRT) (9th Cir. 2009); *see also Christensen v. Stevedoring Services of America*, 43 BRBS 145, 146 (2009), *modified in part on recon.*, 44 BRBS 39, *recon. denied*, 44 BRBS 75 (2010), *aff'd mem. sub nom. Stevedoring Services of America, Inc. v. Director, OWCP*, 445 F.App'x 912 (9th Cir. 2011).

In challenging the reduction in the attorney hourly rates, claimant avers that the administrative law judge erred in failing to presume that the requested rates represent reasonable hourly rates as counsel produced supporting evidence, and employer did not submit rebuttal evidence. *See Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973 (9th Cir. 2008) ("[a]ffidavits of the plaintiffs' attorney[s] and other attorneys regarding prevailing fees in the community, and rate determinations in other cases . . . are satisfactory evidence of the prevailing market rate."). We reject claimant's contention. "The burden is on the fee applicant to produce satisfactory evidence . . . that the requested rates are in line with those prevailing in the community for similar services by lawyers of comparable skill, experience, and reputation." *Christensen*, 557 F.3d at 1053, 43 BRBS at 8(CRT) (quoting *Blum v. Stenson*, 465 U.S. 886, 896 n.11 (1984)). In this case, claimant submitted exhibits in support of his requested hourly rates and employer

objected to that evidence and submitted contrary evidence. The administrative law judge therefore was not bound to accept counsel's claim to hourly rates of \$500 and \$300.¹

Claimant also contends that the administrative law judge erred in failing to find persuasive the "Dupree Matrix" and his evidence of higher rates awarded to his attorneys by other tribunals.² We need not address these contentions at length. The administrative law judge thoroughly addressed each party's evidence, *see* Order at 5-8, and his award of hourly rates of \$388 and \$225 is supported by evidence submitted by the parties. The administrative law judge found that the best evidence of base market rates in San Diego is the rates claimed by Mr. Easley and Mr. Winter, two attorneys with significant longshore experience. These attorneys claimed between \$350 and \$365 per hour for services performed in San Diego during the period of 2008 to 2011. Order at 7. Taking these rates into account, as well as Mr. Dupree's considerable experience, skill and reputation, and the nature of this case, the administrative law judge found that Mr. Dupree is entitled to an hourly rate of \$388. *Id.* at 7. The administrative law judge found that Mr. Myers, based in part upon a comparison of his lesser experience relative to that of Messrs. Easley and Winter, is entitled to an hourly rate of \$225. *Id.* at 7-8.

The Supreme Court has stated that, "[t]rial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection." *Fox v. Vice*, 131 S.Ct. 2205, 2216 (2011). Moreover, "[a] request for attorney's fees should not result in a second major litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Claimant has not established that the administrative law judge's hourly rate determinations are arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See* 20 C.F.R. §702.132(a). The rates awarded are supported by evidence submitted to the administrative law judge, and we therefore affirm the award of hourly rates of \$388 and \$225. The administrative law judge's fee award is affirmed.

¹ Claimant is correct in stating that the administrative law judge mischaracterized the declaration of Mr. Dysart, an attorney whose declaration claimant submitted into evidence in support of his requested hourly rates, as "self-serving" due to Mr. Dysart's status as a longshore attorney. Order at 6. Contrary to the administrative law judge's finding, Mr. Dysart's *curriculum vitae* indicates that he does not perform longshore work. *See* CX 10. In light of the administrative law judge's thorough discussion of the exhibits presented by both parties, this error is harmless.

² The "Dupree Matrix," compiled by claimant's counsel, contains data from numerous district court fee awards from 2008 to 2010 for the United States District Courts in the Northern, Central, and Southern Districts of California. *See* CXs 12, 13.

Accordingly, the administrative law judge's Order Concerning Attorney's Fees and Order Denying Motion for Reconsideration of Order Concerning Attorney's Fees are affirmed.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge