

SHERYL BRAXTON)	
)	
Claimant-Respondent)	
)	
v.)	
)	
HOWLAND HOOK CONTAINER)	DATE ISSUED: 11/30/2005
TERMINALS, INCORPORATED)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Decision and Order, Order on Request for Reconsideration, and Attorney Fees Order of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Victor A. Worms (Law Offices of Victor A. Worms, P.C.), New York, New York, for claimant.

Francis M. Womack, III (Field Womack & Kawczynski), South Amboy, New Jersey, for employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order, Order on Request for Reconsideration, and Attorney Fees Order (2003-LHC-2618) of Administrative Law Judge Paul H. Teitler 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). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359

(1965). 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. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, a hustler driver, suffered an injury to her back during the course of her employment on July 15, 2002. In his Decision and Order, the administrative law judge found claimant entitled to continuing temporary total disability compensation from December 9, 2002, 33 U.S.C. §908(b), as well as medical benefits, 33 U.S.C. §907. Employer was held liable for an additional ten percent assessment pursuant to Section 14(e), 33 U.S.C. §914(e). Employer filed a motion for reconsideration, contending that the administrative law judge erred in awarding a Section 14(e) assessment. The administrative law judge granted this motion, finding that employer filed a timely notice of controversion and therefore is not liable for a Section 14(e) assessment. Employer filed a timely notice of appeal after the administrative law judge's Order on Reconsideration was issued.

In the meantime, claimant's counsel filed a petition for an attorney's fee for work performed before the administrative law judge. Counsel requested a fee for 110.20 hours of legal services at an hourly rate of \$275, plus expenses of \$23.62. Employer filed objections to, *inter alia.*, 29.3 hours of services performed before the administrative law judge, to the hourly rate, and to the costs. In his award of an attorney's fee, the administrative law judge denied the requested costs as part of office overhead, disallowed 32.4 hours of services performed before the district director, and reduced the remaining hours by 9.6. The administrative law judge found the requested hourly rate reasonable for the geographic area, given counsel's legal experience and his handling of the claim. The administrative law judge thus awarded claimant's counsel an attorney's fee of \$18,755. Employer filed a timely notice of appeal of the fee award.

On February 1, 2005, employer requested an extension of time to file a consolidated Petition for Review and brief in both its appeals. Employer subsequently filed its Petition for Review and brief addressing only its appeal of the fee award. On March 7, 2005, the Board issued an order requiring employer to file its Petition for Review and brief in its appeal of the merits within ten days or to show cause why its appeal should not be dismissed. Employer has not responded. Therefore, employer's appeal of the decisions on the merits is dismissed with prejudice, and the administrative law judge's Decision and Order and Order on Request for Reconsideration are affirmed.¹ 20 C.F.R. §§802.211(d), 802.402(a).

¹ By letter to the Clerk of the Board dated October 31, 2005, claimant's counsel states that employer has not paid the attorney's fee award that the district director entered on April 14, 2005. Claimant is advised that employer's appeal of the merits remained

With regard to its appeal of the attorney's fee award, employer contends the administrative law judge erred in not disallowing or reducing additional hours requested and in not reducing the hourly rate to reflect counsel's lack of experience with Longshore Act claims. Claimant responds, urging affirmance.

It is the administrative law judge's responsibility to review the fee petition and to determine if the fee requested is reasonably commensurate with the necessary work done. In awarding a fee, the administrative law judge must take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded. 20 C.F.R. §702.132. The administrative law judge disallowed the 32.4 hours of services performed before the district director. He acknowledged employer's objections to 29.3 of the remaining hours of services, and he disallowed a total of 9.6 of these hours. Employer has not established that the administrative law judge abused his discretion in awarding a fee for the remaining 68.2 hours, as the administrative law judge addressed employer's objections and considered the amount of the fee request in light of the regulatory criteria. Therefore, we reject employer's contention of error. *Pozos v. Army & Air Force Exchange Service*, 31 BRBS 173 (1997).

We also reject employer's contention that the administrative law judge erred in awarding claimant's counsel an hourly rate of \$275. The administrative law judge addressed employer's objection to the rate based on counsel's relative lack of experience with longshore cases. The administrative law judge, however, noted counsel's overall legal experience and found that he handled the claim in a diligent, professional manner. In addition, the administrative law judge found the requested rate commensurate with that awarded in the New York City area. The administrative law judge is in the unique position of evaluating the effectiveness of counsel and he fully addressed employer's objections. *See Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001). As employer has not shown that the administrative law judge abused his discretion in awarding an hourly rate of \$275, we affirm the fee award. *Story v. Navy Exchange Service Center*, 33 BRBS 111 (1999); *McKnight v. Carolina Shipping Co.*, 32 BRBS 165, *aff'd on recon. en banc*, 32 BRBS 251 (1998).

Accordingly, the administrative law judge's Decision and Order, Order on Request for Reconsideration, and Attorney Fees Order are affirmed.

SO ORDERED.

pending until dismissed by this decision and that attorney's fee awards need not be paid during the pendency of any appeals. *See Wells v. International Great Lakes Shipping Co.*, 693 F.2d 663, 15 BRBS 47(CRT) (7th Cir. 1982).

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge