

K. B.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
AVONDALE INDUSTRIES,	)	DATE ISSUED: 09/22/2008
INCORPORATED	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees and the Supplemental Decision and Order Ruling on Motion for Reconsideration of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

Christopher R. Schwartz, Metairie, Louisiana, for claimant.

Richard S. Vale, Frank J. Towers, and Pamela F. Noya (Blue Williams, L.L.P.), Metairie, Louisiana, for self-insured employer.

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

PER CURIAM:

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees and the Supplemental Decision and Order Ruling on Motion for Reconsideration (2007-LHC-00021) of Administrative Law Judge Patrick M. Rosenow 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).

Claimant, who sustained a work-related injury on January 23, 2006, was awarded temporary total disability benefits by joint stipulation of the parties in an Order Approving Stipulations and Remand to the District Director issued on September 13, 2007. Claimant's attorney submitted a petition for work performed before the

administrative law judge in the amount of \$23,569, representing 96.2 hours at an hourly rate of \$245; counsel additionally sought \$733.52 in expenses. Employer filed objections to the fee petition. In his supplemental order, the administrative law judge, after addressing employer's objections, reduced the requested hourly rate to \$160, reduced the amount of time requested by 1.75 hours for specific itemized services, and disallowed \$24.27 of the claimed expenses. Accordingly, the administrative law judge awarded claimant's counsel a fee of \$15,112, plus \$709.25 for expenses. Claimant's motion for reconsideration of the \$160 hourly rate was denied.

On appeal, claimant contends that the administrative law judge erred in reducing the requested hourly rate from \$245 to \$160. Employer responds, urging affirmance of the fee award.

The sole issue in this appeal is whether the factfinder's determination of an appropriate hourly rate for claimant's attorney is arbitrary and not reasonably commensurate with the prevailing rate for attorneys in the New Orleans, Louisiana, area. Claimant contends that the administrative law judge erred in reducing the rate from his customary rate of \$245 based on his finding inefficiency in counsel's representation of claimant, and without giving any weight to claimant's counsel's success in prosecuting the claim. We reject claimant's contentions of error.<sup>1</sup>

The regulation governing fee awards, 20 C.F.R. §702.132(a), states, *inter alia*, that “[a]ny fee approved shall be reasonably commensurate with the necessary work done and shall 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(a). In this case, the administrative law judge provided a detailed discussion of his rationale for reducing the hourly rate, pursuant to the regulatory criteria. Initially, the administrative law judge stated that he considered, contrary to claimant counsel's contention, all of the regulatory criteria, including claimant's level of success. Supplemental Decision and Order Awarding Attorney Fees at 2. The administrative law judge found that the standard hourly rate in the relevant geographic region is closer to the \$175 to \$195 per hour rate urged by employer than the \$245 hourly rate sought by claimant's counsel. The administrative law judge agreed with employer's assertion that counsel's failure to ensure prompt and reasonable responses during the discovery process, to take the steps to ensure that claimant was aware of and attended court-ordered medical examinations, and to attend previously scheduled conferences resulted in an unnecessary expenditure of time by the court and opposing counsel.

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<sup>1</sup> Claimant's counsel's unsupported allegation of personal bias against him is rejected. Adverse rulings by the administrative law judge are an insufficient basis to show bias. See *Orange v. Island Creek Coal Co.*, 786 F.2d 724, 8 BLR 2-192 (6<sup>th</sup> Cir. 1986); *Raimer v. Willamette Iron & Steel Co.*, 21 BRBS 98 (1988).

The administrative law judge delineated entries totaling 21.03 hours by claimant's counsel that he found showed counsel represented claimant in an inefficient way that delayed the resolution of the case. *Id.* at 3-5. The administrative law judge found that while claimant's counsel is entitled to a fee for some of the delineated time as it was necessary work expended on claimant's behalf, employer's objections did not address how many hours should be denied as unnecessary. The administrative law judge concluded that he would instead reduce the hourly rate to \$160 to reflect the level of claimant's counsel's efficiency of representation, rather than disallow specific time expended as unnecessary. In his decision on reconsideration, the administrative law judge further discussed counsel's inefficiencies, noting that an attorney's efficiency is a factor in assessing the quality of representation, which is one regulatory criterion for determining an attorney's fee.

After considering claimant's contentions, as well as the administrative law judge's finding regarding the customary rates awarded for similar cases in the same geographical area, we reject claimant's assertion that the administrative law judge committed reversible error by reducing claimant's counsel's hourly rate based on his inefficient representation.<sup>2</sup> The administrative law judge appropriately considered the necessity of the work performed, the quality of representation and the amount of benefits awarded, in accordance with Section 702.132(a). Supplemental Decision and Order Awarding Attorney Fees at 3, 5; Supplemental Decision and Order Ruling on Motion for Reconsideration at 2.; *see D. V. v. Cenex Harvest States Cooperative*, 41 BRBS 84 (2007); *Baumler v. Marinette Marine Corp.*, 40 BRBS 5 (2006). Claimant has not shown that the awarded attorney's fee constitutes an abuse of the administrative law judge's discretion in view of his application of the regulatory criteria. *See Moyer v. Director, OWCP*, 124 F.3d 1378, 34 BRBS 134(CRT) (10<sup>th</sup> Cir. 1997); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000).

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<sup>2</sup> The administrative law judge found that the standard rate in this locale is closer to the \$175 to \$195 per hour rate urged by employer than to the \$245 hourly rate sought by claimant's counsel. *See generally Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4<sup>th</sup> Cir. 2004). Thus, a fee in this case derived from an hourly rate of \$195, and further reduced based on the quality of claimant's counsel's representation based on a significant percentage of the 21.03 hours the administrative law judge specifically delineated as unnecessary, would result in a fee comparable to the \$15,112 fee awarded by the administrative law judge.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees and the Supplemental Decision and Order Ruling on Motion for Reconsideration are affirmed.

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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REGINA C. McGRANERY  
Administrative Appeals Judge