

BRB No. 96-0305

ALFRED BOLLA)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DOS OFFSHORE, INCORPORATED)	DATE ISSUED:
)	
and)	
)	
THE GRAY INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Awarding Attorney's Fees of George P. Morin, Administrative Law Judge, United States Department of Labor.

Stephen M. Vaughan (Mandell & Wright), Houston, Texas, for claimant.

Before: BROWN, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Awarding Attorney's Fees (95-LHC-829) of Administrative Law Judge George P. Morin 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, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant filed a claim for compensation under the Act, and was successful in obtaining benefits by virtue of the parties' agreement to settle the case pursuant to Section 8(i) of the Act, 33 U.S.C. §908(i). Claimant's counsel thereafter filed a fee petition, requesting a total of \$15,063.57, representing 39.75 hours at \$250 per hour, 18 hours at \$75 per hour, and \$3,776.07 in litigation costs and expenses. Employer filed objections to the fee petition. In his Decision and Order Awarding Attorney's Fees, after considering employer's objections, the administrative law judge awarded counsel a total fee of \$11,871.07, representing 39.5 hours at \$175 per hour, 13.875 hours at \$60 per hour, litigation costs and expenses of \$3,776.07, and \$350 for counsel's preparation of his response to the objections.

On appeal, claimant challenges the administrative law judge's award of the attorney's fee, contending he erred in disallowing a fee for services rendered from January 2, 1995 through March 8, 1995. Employer did not respond to this appeal.

Claimant first contends that the administrative law judge erred by disallowing fees for the time period from January 2, 1995 through March 8, 1995, as employer stipulated in the settlement agreement that it was responsible for claimant's attorney's fee under Section 28 of the Act, 33 U.S.C. §928. The stipulation, however, states that "the amount is disputed." Thus, claimant's contention that employer stipulated to its liability for a fee for this specific period lacks merit as there was no specific amount set and agreed upon.

Claimant next contends that employer is liable for his fees for the period in question because a controversy developed over additional compensation when employer controverted the claim and terminated compensation on February 5, 1992 and again when it controverted liability for certain medical care on May 28, 1993. Pursuant to Section 28(b) of the Act, 33 U.S.C. §928(b), an employer is not responsible for any attorney's fees incurred prior to the date a controversy develops over the amount of additional compensation to which claimant seeks entitlement. *Trachsel v. Brady-Hamilton Stevedore Co.*, 15 BRBS 469 (1983). In the instant case, employer voluntarily paid claimant compensation benefits until March 8, 1995, terminating benefits after claimant's treating physician determined that claimant could perform jobs identified in the labor market survey. The administrative law judge disallowed \$1,275 of counsel's requested fees, representing 3.75 hours of attorney time and 4.5 hours of legal assistant time for the time period from January 2, 1995 through March 8, 1995, finding that employer voluntarily paid all compensation due and that no controversy developed until March 8, 1995. As claimant contends, in an LS-207 Form dated February 5, 1992, employer terminated benefits as a result of claimant's abandonment of medical care, and it reserved the right to take a credit for payments made from January 8, 1992 through February 6, 1992. Emp. Ex. 5. However, on March 10, 1992, employer reinstated and paid all past benefits. On May 28, 1993, employer also controverted its liability for claimant's treatment at the Lowry Fitness Center, alleging that it was not responsible for claimant's knee problems. Emp. Ex. 14. Thereafter, it fully complied with the recommendations of the district director pursuant to the terms of a Memorandum of Informal Conference issued in December 1994 and paid for the medical treatment claimant received for his knee complaints. Emp. Exs. 6, 19, 20. Thus, at the time the case was transferred to the Office of Administrative Law Judges on December 27, 1994, no controversy existed between the parties. As no controversy existed at the administrative law judge level until employer stopped payments on March 8, 1995, the administrative law judge properly held that employer is not liable for services rendered before him prior to this time.¹ *Caine v. Washington Metropolitan Area Transit Authority*, 19 BRBS 180 (1986).

Accordingly, the administrative law judge's Decision and Order Awarding Attorney's Fees is affirmed.

¹Contrary to claimant's contention, the administrative law judge's reason for disallowing the time in question is discernable from the decision and his reference to employer's objections, and his finding is supported by the cases he cited.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge