

BRB No. 90-1035

CLINTON TISDALE)
)
 Claimant-Respondent)
)
 v.)
)
 INGALLS SHIPBUILDING,)
 INCORPORATED)
)
 Self-Insured)
 Employer-Petitioner) DECISION and ORDER

Appeal of the Decision and Order of Richard D. Mills, Administrative Law Judge, United States Department of Labor.

Paul M. Franke, Jr. (Franke, Rainey, & Salloum), Gulfport Mississippi, for claimant.

John F. Dillon (Maples and Lomax, P.A.), Pascagoula, Mississippi, for employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (88-LHC-2831) of Administrative Law Judge Richard D. Mills, on a claim filed pursuant to the provisions of the Longshore and Harbor Worker's Compensation Act, as amended, 33 U.S.C. §901 et seq. (the Act). The administrative law judge found claimant entitled to a fee for services performed in

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act, as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

connection with claimant's successful claim for benefits. On appeal employer contests the number of hours and hourly rate awarded by the administrative law judge. Claimant responds seeking affirmance of the award of attorney fees and an additional assessment of fees for services rendered in connection with this appeal. An attorney's fee determination 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 and Dry Dock Co., 12 BRBS 272 (1980).

On April 14, 1987 claimant filed a claim for compensation. On July 11, 1988 this case was referred to the Office of Administrative Law Judges, and the services for which compensation is sought were all performed after that date. See Supplemental Decision and Order at 1. On January 23, 1989 a Notice of Final Payment or Suspension of Compensation Payments was submitted by the employer. This notice indicated that all permanent partial disability benefits, plus interest, had been paid in full to claimant. These benefits, \$695.48 plus \$117.60 interest, were compensation for a .90% hearing loss. See Ex. C. On May 31, 1989 claimant's attorney filed a petition for approval of attorney's fees for 5.25 hours of representation at \$125.00 per hour and \$5.75 for expenses. On February 21, 1990 the administrative law judge issued a Supplemental Decision and Order in which he reduced the requested hourly rate of \$125 to \$100 and found claimant's attorney entitled to a fee of \$525.00, based on 5.25 hours of representation at \$100 per hour, plus an additional \$5.75 for expenses.

On appeal, employer contends that the 3 hours awarded for the preparation of a Motion to Compel Discovery and two form Notices of Deposition on July 19, 1988 should be disallowed as the information requested by claimant was not necessary nor relevant to a compensation claim. The administrative law judge considered employer's objection and stated that he found the 3 hours requested to be acceptable because he felt that claimant believed the work to be necessary. See Supplemental Decision and Order at 2. This finding is within the discretion of the administrative law judge. See Cabral v. General Dynamics Corp., 13 BRBS 97 (1981). Thus, we affirm the number of hours awarded as the administrative law judge's finding on this issue is neither arbitrary, capricious or an abuse of discretion, and is in accordance with law. See Berkstresser v. Washington Metropolitan Area Transit Authority, 16 BRBS 231 (1984).

Employer next contends that the hourly rate awarded by the administrative law judge (\$100) is excessive, and suggests that a rate of \$75 to \$80 would be more reasonable. After considering the regulatory criteria governing attorney's fee awards, see 20 C.F.R. §702.132, the administrative law judge permissibly determined that an hourly rate of \$100 was more appropriate than the \$125 requested by claimant's attorney. Consequently, we affirm this rate, as the administrative law judge provided a sufficient rationale explaining the reduction. See Thompson v. McDonnell Douglas Corp. and Industrial Indemnity Co., 17 BRBS 6 (1984).

Accordingly, the Supplemental Decision and Order Awarding Attorney fees is affirmed.¹
SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

¹ Regarding claimant's request for an additional assessment of fees for services rendered in connection with this matter, the Board permits a fee for claimant's work on appeal in this attorney fee case. See Jarrell v. Newport News Shipbuilding & Dry Dock Co., 14 BRBS 883 (1982). To this end, claimant must submit a fee request petition with the Board for work performed before the Board.

JAMES F. BROWN
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge